

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 23-10385-lgb

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5 In the Matter of:

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7 TV AZTECA, S.A.B. DE C.V.,

8

9 Debtor.

10 - - - - - x

11 United States Bankruptcy Court

12 One Bowling Green

13 New York, NY 10004

14

15 August 29, 2023

16 1:20 PM

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21 B E F O R E :

22 HON LISA G. BECKERMAN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: F. FERGUSON

1 HEARING re Alleged Debtors Motion to Dismiss the Involuntary
2 Chapter 11 Petitions

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25 Transcribed by: Sonya Ledanski Hyde

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1 P R O C E E D I N G S

2 THE COURT: Court is now in session. I'm going to
3 go ahead and note this is a continuation of the hearing that
4 began yesterday in case number 23-10385 TV Azteca, S.A.B. de
5 C.V. And for purposes of the record, I'm going to ask the
6 attorneys again to put their appearances on the record. I'm
7 going to remind the attorneys they have to speak at the
8 podium to do that. Thank you.

9 MR. CLAREMAN: Good afternoon, Your Honor. Billy
10 Clareman from Paul Weiss on behalf of the alleged Debtors.
11 I'm again joined at counsel table by Kelley Cornish and Jay
12 Cohen.

13 MS. CORNISH: Good afternoon, Your Honor.

14 THE COURT: Good afternoon.

15 MR. COHEN: Good afternoon, Your Honor.

16 MR. QURESHI: Good afternoon, Your Honor. Abid
17 Qureshi, Akin Gump Strauss Hauer and Feld, and with me are
18 Michael Stamer, Sarah, Schultz, and David Giller all on
19 behalf of the petitioning Creditors and the indentured
20 Trustee.

21 THE COURT: Good afternoon.

22 MAN 1: Good afternoon. Thank you.

23 MR. PLAZA: Good afternoon, Your Honor. Curtis
24 Plaza from Riker Danzig on behalf of Bank of New York as
25 indentured trustee.

1 THE COURT: Good afternoon, Mr. Plaza.

2 MR. PLAZA: Thank you.

3 MS. BOY SKIPSEY: Good afternoon, Your Honor.

4 Katherine Anne Boy Skipsey from Sheppard Mullin on behalf of
5 Diamond Films.

6 THE COURT: Good afternoon. All right. Okay. So
7 we are here for closing argument, and I presume -- I don't
8 know who on your side is going to handle it, Mr. Clareman,
9 whether it's you or one of your partners.

10 MR. CLAREMAN: Thank you, Your Honor. I will be
11 splitting --

12 THE COURT: Uh-huh. That's fine.

13 MR. CLAREMAN: -- closing with Kelley Cornish.

14 THE COURT: Okay.

15 MR. CLAREMAN: Your Honor, I have a closing dec
16 that I'd like to hand up if I may approach.

17 THE COURT: Yes. You may approach. Thank you.

18 MR. CLAREMAN: Thank you, Your Honor. If you turn
19 to page -- the first page of the dec that we handed up, that
20 sets forth a summary of the arguments that we have advanced
21 to dismiss these involuntary cases. There are four
22 arguments that we've made. The first is that dismissal is
23 warranted under Section 305(a)(1) of the Bankruptcy Code.
24 Second, that dismissal on the basis of form non-convenience
25 is appropriate. Third, that dismissal for lack of standing

1 under Section 303(b)(1) of the Bankruptcy Code is
2 appropriate. And fourth, that dismissal under Section
3 1112(b) of the Bankruptcy Code is appropriate on the facts
4 of this case. I will be addressing arguments under
5 305(a)(1), and form non-convenience, and Ms. Cornish will be
6 addressing the arguments under Section 303(b)(1) and 1112(b)
7 of the Bankruptcy Code.

8 THE COURT: That's fine, Mr. Clareman. I guess I
9 should just warn you the way that I usually will probably do
10 this is not interrupt you, probably not interrupt you
11 either, but I will have questions afterwards. So the two of
12 you will have to figure out who's going to answer my various
13 questions afterwards. Just warning you.

14 MR. CLAREMAN: No problem, Your Honor. Thank you.

15 THE COURT: Okay.

16 MR. CLAREMAN: Okay. I'd like to start if you'd
17 turn to Page 3. I'd like to start with the hearing and the
18 evidence that came in yesterday. At the end of the day, the
19 experts agree on at least the following point. All of the
20 alleged Debtors have an establishment in Mexico under
21 Article 279(6) of the LCM. They also agree that Article 293
22 of the Bankruptcy Code requires a concurso to be initiated
23 for all of the alleged Debtors to recognize any foreign
24 proceeding that would arise from this case.

25 They also agree that if this Chapter 11 proceeding

1 were recognized in Mexico as a foreign non-main proceeding,
2 a full concurso would be required. And they also agree on
3 what that means. That means the visita stage under the
4 concurso law must be commenced, the conciliation stage must
5 be observed. No reorganization's possible over the
6 objection or without the approval of the Debtors. The IFT,
7 which regulates TV Azteca and provides it with concessions
8 to broadcast television has specific enumerated rights,
9 which include the right to veto any plan of reorganization,
10 to supervise the conciliator, among other things.

11 And the reorganization must otherwise comply with
12 all of the applicable provisions of the LCM, Mexican law,
13 and public policy. The outcome of that agreement in this
14 case is that there will inevitably be here a do-over in
15 Mexico arising from these proceedings.

16 I'll turn next starting with the next page to
17 address the disagreement that exists with respect to the
18 application of Article 293 to these cases. There's really
19 only one narrow area of disagreement as it relates to
20 Article 293. And we submit that Professor Mejia, his
21 testimony on this subject is the testimony that should be
22 credited.

23 Professor Mejia explained that a full concurso is
24 required any time recognition is sought for a Debtor with an
25 establishment in Mexico. Professor Mejia -- and that exists

1 whether it's main or non-main. Establishment is the key
2 term under Article 293. Professor Mejan provided that
3 opinion in his opening declaration. He remained consistent
4 in his subsequent declarations. He was consistent in this
5 trial on that subject. His opinion is based on the text of
6 Article 293, which does not differentiate between main and
7 non-main proceedings. Article 293 and 294 draw a
8 distinction between establishment in Mexico concurso, no
9 establishment in Mexico ancillary.

10 There are other provisions in the LCM including
11 Article 309, for example, that do draw a distinction between
12 main and non-main proceedings. The LCM says in its text
13 when there is a difference required by -- for recognition of
14 foreign main and foreign non-main proceedings, and that is
15 not contained in Article 293.

16 In contrast to Mr. Mejan's -- Professor Mejan's
17 opinions, Mr. Guerra has been inconsistent in these
18 proceedings with respect to his interpretation of Article
19 293. We have seen his opinion evolve over the course of
20 declarations and testimony. In Mr. Guerra's initial
21 declaration, he testified that -- and I'm quoting from JX
22 123 at Paragraph 32, "Starting the concurso from scratch
23 solely because a Debtor's center of main interest is in
24 Mexico is inconsistent with the purpose of Title 12."
25 That's where Mr. Guerra started.

1 He did not, in his initial declaration, explain
2 Article 293, how it worked. That was missing, and he
3 disagreed with the -- or he was purporting to disagree at
4 that time with Professor Mejan's opinions. In Mr. Guerra's
5 supplemental declaration, after seeing Mr. -- Professor
6 Mejan's two initial declarations, Mr. Guerra stated
7 Professor Mejan is correct that Article 293 provides that a
8 full concurso needs to be initiated for recognizing any
9 foreign proceeding of a company that has an establishment in
10 Mexico.

11 I'm quoting from JX 130 at Paragraph 47. Mr.
12 Guerra's supplemental declaration did not describe a
13 differentiation between foreign main and foreign non-main
14 proceedings in talking about Article 293 and how it applied.
15 But at trial, Mr. Guerra testified that a full concurso is
16 only required if a Chapter 11 case is recognized as a
17 foreign non-main proceeding if it's -- if recognition is
18 sought and the Chapter 11 cases for a foreign main
19 proceeding. Then Mr. Guerra testified you don't need to do
20 the full concurso. You can stop short after the visitation
21 stage.

22 This interpretation has no support whatsoever in
23 Article 293, other provisions of the concurso law, and Mr.
24 Guerra confirmed there were no cases that he was aware of to
25 support his interpretation. But as a result of that

1 reading, that tortured reading of Article 293, Mr. Guerra
2 now has to cling to the opinion that the alleged Debtors
3 COMI is in the United States. And we submit that that is
4 not a remotely credible opinion. It -- his opinion that a
5 Mexican court would more likely than not -- that was his
6 testimony, conclude that the alleged Debtors have their COMI
7 in the United States is not only incredible, but that
8 opinion should be weighed by the Court in assessing any of
9 Mr. Guerra's opinions.

10 His claim is essentially that because 3 of the 35
11 alleged Debtors are incorporated or organized under U.S.,
12 that's sufficient to establish that all of the alleged
13 Debtors' COMI is in the United States. Mr. Guerra ignores
14 the fact that 25 of the 25 alleged Debtors that are
15 domiciled in Mexico, 7 more are domiciled in other countries
16 outside the U.S., and that substantially all of the alleged
17 Debtors' operations, management, employees, offices, and
18 revenues are located in or derived from Mexico.

19 His opinion appears to be intertwined -- we heard
20 some of this in his testimony yesterday that his opinion on
21 COMI perhaps is intertwined with his what I'll call
22 confusion about the relationship between COMI and
23 jurisdiction, that there's no basis for that conclusion or
24 drawing that link. It isn't, and nothing in Articles 15, 15
25 biz, or 17 of the LCM are to the contrary or support his

1 opinions. None of his opinions about Article 293 has any
2 support in any body of law that he could point to.

3 I'll turn next to Slide 7. Based on the evidence,
4 at most, at most, these proceedings could be recognized
5 potentially as a foreign non-main proceeding. That is I
6 think the most that the evidence could ever show for some of
7 the alleged Debtors. I'm going to come back to
8 establishment. I'm not conceding that point, but I -- just
9 to frame the consequence of what I think is the clear
10 conclusion based on the evidence is that if these cases were
11 recognized as a foreign non-main proceeding, there would
12 need to be a full concurso. That is the evidence, and that
13 is the most that I think Mr. Guerra has agreed to. But I
14 think it is dispositive ultimately here.

15 So what that means is that upon any request for
16 recognition, the visitation stage would start, take 15 to 30
17 days. If the insolvency test is met, a conciliator would be
18 appointed, and the conciliation phase would be initiated.
19 That would take up to a year. Any plan of reorganization
20 has to comply with all of the provisions of the LCM. No
21 plan can be approved by the concurso court without the
22 Debtors' agreement and the requisite amount of Creditor
23 support.

24 Any change to the Debtors' equity requires the
25 consent of TV Azteca shareholders. Any plan has to be

1 approved by the IFT, which will have substantial rights to
2 appoint and supervise the conciliation stage. If the
3 conciliation stage is unsuccessful, there would be a
4 liquidation in Mexico, okay? That is inevitable, and I
5 think that the evidence shows that at this point and cannot
6 be refuted.

7 A Chapter 11 case -- if Your Honor would turn to
8 the next slide, a Chapter 11 case under these circumstances
9 that can only be a prelude to a full concurso will not
10 accomplish a reorganization of the alleged Debtors. It will
11 impose substantial cost. It will impose substantial
12 disruption to their business. The factors courts consider,
13 I will back to these factors in a bit, but the factors that
14 courts have described as relevant to the analysis as to
15 whether to dismiss the Chapter 11 case under Section
16 305(a)(1), all of them point to dismissal under the
17 circumstances we submit.

18 Economy and efficiency of an administration of a
19 reorganization cannot be advanced or achieved by a Chapter
20 11 case. Chapter 11 proceedings will not produce an
21 enforceable plan of reorganization or distribution of the
22 Debtors' assets. A second insolvency proceeding would be
23 necessary, would be required in this case rendering this
24 proceeding ultimately superfluous. A Chapter 11 case that
25 is preliminary to a concurso case would be time-consuming.

1 It would be expensive. Ultimately, it would harm the
2 Debtors. It would harm their stakeholders. It would harm
3 their Creditors.

4 If you would turn to the next slide, the features
5 of Mexican law that we have described and that Professor
6 Mejan described, that's the reason why Mexican companies
7 that seek reorganization in the United States don't seek
8 recognition proceedings in Mexico. That is I think the
9 clear inference for what you're seeing play out in these
10 cases. The four cases that have been cited by the
11 petitioning Creditors and their expert, Aero Mexico, Sat
12 Mex, Max Com, and Posadas, all of those cases involve
13 voluntary Chapter 11s in the United States, Debtor supported
14 plans, approval by shareholder, or no impact on the equity.

15 But critically, none of them involve any attempt
16 to enforce plans in Mexico or even obtain recognition in
17 Mexico, which is a pretty remarkable thing when you consider
18 the fact that these companies clearly have substantial
19 presence in Mexico.

20 I'll turn next to, briefly, to some of the
21 evidence on the subject of the Debtors' -- of the alleged
22 Debtors' COMI. As I mentioned before, Mr. Guerra's
23 testimony and conclusion and opinions that the alleged
24 Debtors have their COMI in the United States is, we submit,
25 not credible. Slide 11 or Slide 10 has 20 -- reflects that

1 25 of the alleged Debtors are incorporated in Mexico. We've
2 circled those in red here. Only three of the alleged
3 Debtors are incorporated or organized under U.S. law.
4 Substantially all of the alleged Debtors' business is in
5 Mexico. Mexico City is where the principal -- where TV
6 Aztec's principal place of business is. It's where the
7 alleged Debtors' management is located. It's where TV
8 Aztec's board is located, their controlling shareholder.

9 It's where 37 of the 50 subsidiaries, that
10 includes non-Debtor subsidiaries, are located --
11 incorporated. It's where over 3,000 of their employees, 94
12 percent of their employees are located. It's where 94
13 percent of their revenues are generated or were in 2022.
14 The Mexican government regulates them. It's where almost
15 all of their real property is located. It's the center of
16 all of the alleged Debtors have commercial relationships.
17 It's where the majority of their Creditors are and
18 counterparties.

19 I'm going to turn next to the dispute about
20 whether there's an establishment in the United States.
21 There is no dispute that there are establishments for all of
22 the alleged Debtors in Mexico. That much is agreed on. And
23 as I've explained, that has significant consequences for
24 this case. There is certainly no evidence that all 35 of
25 the alleged Debtors have an establishment in the United

1 States. There are arguments that have been made that are
2 really directed to, at most, three or four of the alleged
3 Debtors that have contract -- that are contract
4 counterparties, and that have commercial relationships with
5 parties in the United States. I've reproduced on Slide 12
6 the LCM provision that is similar to what's in the Model Law
7 that provides that an establish shall be understood as any
8 place of operations where the merchant exercises an economic
9 activity with human and material resources or services in a
10 non-transitory manner.

11 We've also reproduced Sections 89 and 90 of the
12 Model Laws guide to Enactment which provides some of the
13 other considerations that courts have considered in
14 relationship -- not just Mexican courts, but courts in the
15 U.S., for example, have found these instructive in
16 connection with evaluating establishment. And occasional
17 place of operations can't be classified as an establishment.
18 There's no presumption with respect to the determination of
19 establishment.

20 The alleged Debtors, or some of them, used to have
21 an establishment. That was a long time ago. The alleged
22 Debtors used to operate a network in the United States. It
23 was called Azteca America. It operated in the U.S. through
24 U.S. subsidiaries. It was sold to HC2, which is an
25 unaffiliated third party, and that sale happened in 2017.

1 Thereafter, HC2 operated TV Azteca America Network. That
2 was on the air until 2022. It ceased in December of 2022.
3 That network is discontinued. It does not continue to
4 broadcast in the United States. And so what remains today
5 are what I'll vestigial entities. They are entities that
6 were originally set up when there was a network when there
7 was business here. And they do continue to exist, and they
8 are contract counterparties to certain U.S. parts.

9 Most of those agreements, and they're in the
10 evidence, and I'll comment a little bit more on them
11 shortly, but most of those agreements are a very short
12 duration and for isolated projects and individual show.
13 Things of that nature. If Your Honor would turn to the next
14 slide. In evidence on the -- in the stipulated list of
15 exhibits there are 38 contracts in evidence that are relied
16 upon by the petitioning Creditors to show the existence of
17 an establishment to which only four of the alleged Debtors
18 are parties.

19 I'm not including in that group contracts with
20 GSI. I'll address GSI separately. Of those contracts, 17
21 are on their face expired or terminated if you look at them.
22 There are 21 that just by their terms are not expired. The
23 21 contracts are with 11 counterparties. So for example,
24 there's five contracts with PGA, three with Amazon, and so
25 on. And the contracts predominantly involve licenses for

1 third parties to use content that's developed in Mexico,
2 outside of Mexico. And with respect to the current
3 contracts, many of those as I mentioned are, in fact, short
4 term contracts that will expire within the next two years.

5 If Your Honor would turn to the next slide, I want
6 to address specifically the Univision contract. We've heard
7 testimony and we heard questioning yesterday about the
8 Univision contract. That is a contract that Azteca
9 International Corporation, AIC, has entered into with
10 Univision. It is a seven-year contract that was a prior
11 contract that existed. The actual work, everything related
12 to that contract is in Mexico.

13 TV Azteca licenses -- well, AIC licenses to
14 Univision the right to broadcast in the United States the
15 soccer games for two Mexican soccer league teams. The TV
16 Azteca networks in Mexico, they broadcast these games in
17 Mexico to Mexican audiences, and they send a signal, a TV
18 signal to Univision. They give them a stream. It's the
19 same broadcast. It is shown in the United States on
20 Univision, but that's the contract.

21 If you'd turn to the next slide, there's also been
22 discussion in the past about PGA contracts. There are
23 several of those. What those contracts allow TV Azteca to
24 do is host -- and it's Azteca Sports is the actual contract
25 counterparty, but what happens under those contracts is

1 there's a golf tournament in Mexico. And that's a PGA golf
2 tournament. It's organized. It's sponsored. It happens in
3 Mexico. It is broadcast in Mexico by TV Azteca. There are
4 rights under certain of the agreements to have a broadcast
5 in the United States, but they don't have a network in the
6 United States.

7 If Your Honor would turn to the next slide, I'll
8 touch briefly on GSI. There's a lot about GSI in the
9 petitioning Creditor's opposition brief. We heard some
10 questioning about it yesterday. The claim that TV Azteca
11 maintains operations in the U.S. through GSI is untrue and
12 completely unproven by this evidentiary record. GSI is a
13 third party contractor. It performs certain legal and
14 consulting services. There are employees at and in
15 particular two lawyers who work at GSI who were formerly TV
16 Azteca employees when TV Azteca had U.S. operations.
17 Because it used to have a network here.

18 Those -- a couple of those people work at GSI, and
19 they're lawyers, and they perform legal services. There are
20 matters of U.S. law that need to be addressed by TV Azteca.
21 That is principally the work that they do. They also have
22 agreements that allow for other consulting services from
23 time to time, but Mr. Rodriguez testified at his deposition
24 that the current services are limited and primarily involve
25 legal advice.

1 So ultimately, the record on COMI is crystal
2 clear. The COMI for these entities given their management,
3 their operations, what they do, what their business is,
4 clearly Mexico. And the notion that three U.S. subs that
5 are essentially paper counterparties to other U.S. entities
6 could drag -- could cause a Mexican court to conclude that
7 TV Azteca is a -- has its center of main interest in the
8 United States is not, we submit, credible. It would be like
9 concluding that because Comcast or NBC had one or two or
10 three -- Mr. Guerra says one is enough, but let's say three
11 deminimis Mexican subsidiaries, a court might conclude that
12 those, you know, major American companies have, in fact,
13 their COMI in Mexico.

14 The record on establishment is contested.
15 Professor Mejan offered his opinion. That opinion was based
16 on the declarations of Mr. Rodriguez. Those declarations
17 describe the contractual relationships with various parties.
18 They describe the nature of the alleged Debtors' U.S.
19 operations, which don't exist, and the Mexican operations.
20 That conclusion is well supported. It may, at most, be a
21 litigation in Mexico about whether there is an establishment
22 here for a very small number of alleged Debtors. At most.

23 I want to turn next to the subject of litigation
24 in Mexico because we have obviously heard quite a bit about
25 litigation in Mexico and injunctions that have been issued

1 by Mexico courts. At the outset of these involuntary cases,
2 the alleged Debtors made a choice. They chose to file an
3 involuntary Chapter 11 case in this court instead of
4 initiating an involuntary concurso case. That decision, we
5 submit on the record, was not made because they believed
6 that they were enjoined from filing an involuntary concurso
7 case at the outset of these cases. Their statement in
8 support of their petition, filings in connection with the
9 stay motion to be sure complained about the Mexican
10 litigations and raised the Mexican litigations as an issue,
11 but they did not say we are filing in this court because we
12 want to file in Mexico, but we can't file in Mexico.

13 There was a form preference that we submit was
14 motivating the petitions. There have been allegations or
15 claims about the secret nature of the proceedings in Mexico
16 or the secret nature of filings or ex parte relief. Mr.
17 Guerra confirmed that as a matter of Mexican practice they
18 complied with Mexican law. There's not a claim that under
19 Mexican law by Mr. Guerra that procedurally there was
20 something improper about the way that those cases were filed
21 in terms of the disclosure are pursued.

22 The petitioning Creditors have been served with
23 one of the injunctions. They're litigating that. They have
24 filed a motion to vacate. They have challenged other
25 rulings of the Mexican court, one of which was successfully

1 challenged. There was a ruling early on about the amount of
2 time to answer one of the complaints. There was a ruling
3 against them. They obtained a ruling in their favor.
4 They're litigating those cases. The cases, though, have not
5 -- did not have -- before these petitions were filed, they
6 have no effect on the actual litigation that was pending at
7 that time before Judge Gardephe.

8 There was not an argument that was -- they were
9 not advanced in the briefing before Judge Gardephe as a
10 basis to deny their summary judgment motion. There were
11 other arguments about the summary judgment motion that Ms.
12 Cornish will touch on later, but they were not advanced as a
13 basis to not file them or to rule against them on those
14 motions.

15 If Your Honor would turn to Slide 20, Professor
16 Mejan opined that the injunctions that have been issued by
17 the Mexican courts do not prevent the commencement of an
18 involuntary concurso proceeding. The experts disagree. Mr.
19 Guerra has offered the opinion that they would have that
20 effect, but that is the only basis in the record to reach
21 that conclusion. It is Mr. Guerra's speculation about what
22 would happen. That proposition was never tested. There
23 were never -- there was never a concurso filed on an
24 involuntary basis in Mexico which would tell us what the
25 effect of the injunctions actually is.

1 We submit that Mr. Guerra's speculation about that
2 subject given his other credibility issues, given the fact
3 that he actually provided the parties with a copy of an
4 injunction that specifically enjoined bankruptcy cases and
5 undermined the rest of his opinion on the effect of the
6 existing injunctions should not be granted.

7 I'll turn now on Page 21 to a discussion of the
8 law, U.S. law, on Section 305(a)(1). Section 305(a)(1)
9 allows the court, after noticing a hearing, to dismiss the
10 case under this title if the interests of Creditors and the
11 Debtor would be better served by such dismissal. The
12 standard under the case law is met when there is no
13 reasonable likelihood that the Debtor intended to
14 reorganize, and no reasonable probability that it would
15 eventually emerge from bankruptcy proceedings. The
16 objective futility -- quoting from Multicanal, the objective
17 futility of any possibility of administering a
18 reorganization in this jurisdiction is grounds for dismissal
19 under Section 305(a)(1). Again, that's Multicanal.

20 In Jacor, the Southern District of Texas case, the
21 court dismissed an involuntary Chapter 7 petition under
22 Section 305(a)(1) because a Mexican court may not recognize
23 the enforceability of orders issues from a United States
24 bankruptcy court in an involuntary proceeding against a
25 Mexican citizen in domiciliary.

1 On the next slide we've collected other factors
2 that courts consider in connection with dismissal of cases
3 under Section 305(a)(1). And again, I touched on these
4 earlier, but because of the need for a concurso and because
5 of the conflicts between concurso law and how concurso would
6 proceed and U.S. law, keeping these cases here would not
7 promote the economy and efficiency of administration of any
8 reorganization.

9 Another forum is available. It is there. It is
10 the necessary forum. There is no way to avoid that forum.
11 Chapter 11 cases are not necessary, we submit, to reach any
12 just or equitable distribution of assets because they cannot
13 be administered here. And again, all of the factors that
14 courts look to we submit compel dismissal here.

15 I'd like to turn next to Multicanal specifically,
16 talk a little bit about Multicanal and Globalpar. We heard
17 about both of those cases yesterday. So Multicanal has a
18 lot of similarities to this case. In Multicanal, the court
19 considered an involuntary Chapter 11 petition for an
20 Argentine company headquartered in Buenos Aires. 90 percent
21 of Multicanal's operations were in Argentina. Multicanal's
22 U.S.-based assets were three bank accounts with an aggregate
23 balance of approximately \$9,500.

24 Multicanal did issue U.S. denominated -- U.S.
25 dollar denominated notes pursuant to a New York governed

1 adventure. Those notes accounted for about 97 percent of
2 Multicanal's debt according to Judge Gropper's opinion. The
3 U.S. notes were registered with the SEC, and those notes
4 were marketed and sold with the assistance of U.S. advisors
5 and underwriters in the United States. And on the record
6 there, Judge Gropper found that in that case -- he commented
7 that the motives of the involuntary Petitioners are less
8 important than the objective futility of any possibility of
9 administering a reorganization in this jurisdiction and
10 stated that a motion to dismiss -- on a motion to dismiss I
11 should say, a court must take into account its ability to
12 enforce its own orders.

13 He continued that a concurrent U.S. case would
14 conflict with rather than compliment based on the expert
15 testimony there an insolvency proceeding in Argentina, and
16 it would not be recognized in Argentina under Argentine
17 insolvency law. And that was again a basis to dismiss the
18 petition.

19 Globopar is not to the contrary. Globopar
20 involved a Brazilian company. It was headquartered in
21 Brazil. All of its employees, principal offices, principal
22 place of business was also located in Brazil. Vast majority
23 of Globopar's property was there, but Globopar also had
24 issued over a billion dollars of U.S. dollar denominated
25 debt, including approximately 750 million, which expressly

1 subjected, according to the opinion, Globopar to
2 jurisdiction of New York courts for actions arising out of
3 the bondo.

4 And it was also the case that at Globopar there
5 was expert testimony that was unrebutted that said, quoting
6 from the opinion -- this is 317 B.R. 235 at 244 Note 4 that
7 it seems likely that a Brazilian court would refuse to
8 recognize any judgments or orders issued by the bankruptcy
9 court related to Globopar. The district court in Globopar
10 did reverse and remand a decision by the bankruptcy court in
11 that case.

12 The reversal, though, was based on the fact that
13 the bankruptcy court had failed to develop a sufficient
14 factual record in the case and had failed to address
15 arguments that had been made by the parties on issues like
16 jurisdiction and service of process among other things. And
17 there's a lot of frustration when you read Globopar in the
18 fact that the bankruptcy court had failed to develop a
19 record or articulate reasons for all of its rulings.

20 But the Globopar court did observe, based on the
21 record as it was presented to that court, that the case was
22 in fact a strong one for abstention based on the record.
23 And the Court noted that, and I'm quoting, "Potential lack
24 of cooperation from Globopar, foreign Creditors, and the
25 Brazilian courts would certainly stand as a significant

1 impediment to the orderly administration of Globopar's
2 bankruptcy estate since there's no indication that the
3 bankruptcy court would be able to obtain the cooperation of
4 foreign Creditors who are not subject to bankruptcy court's
5 jurisdiction. And a Brazilian court may not compel to
6 participate in any United States bankruptcy proceeding.
7 Such considerations may well weigh heavily in the bankruptcy
8 court's assessment of factors enumerated by Section
9 305(a)(1) of the Bankruptcy Code or by other jurisdictional
10 and equitable dockets." And again, if the court -- this is
11 a quote, "The petition appears to represent a strong
12 candidate for abstention."

13 Now, Globopar, and this is summarized on Page 27,
14 did say in relation to Multicanal that it did not agree, and
15 I'm quote, "Did not agree with a legal conclusion reached in
16 a decision otherwise well-reasoned recently issued by
17 another bankruptcy court in this district." And that's
18 referring to Multicanal. The specific point that the
19 Globopar court identified in Multicanal was that Multicanal
20 stated in the course of the decision that it would be on --
21 that there was concern by the court that it would be unable
22 to exercise effective jurisdiction.

23 And what Globopar says is, well, the bankruptcy
24 courts with in personum jurisdiction. That how it obtains
25 in rem jurisdiction, and that was not addressed in the

1 manner that that an analysis should proceed. That was
2 essentially the criticism of Multicanal. But Globopar did
3 not say that on the facts of Multicanal abstention was
4 inappropriate. Globopar said the opposite. I submit that
5 Globopar, notwithstanding the dismissal of the lower court's
6 opinion, actually supports dismissal in this case and
7 abstention in this case. And of course, you only need to
8 reach 305(a)(1) abstention if there is jurisdiction in the
9 first place.

10 I'm going to touch briefly and only briefly on
11 forum non-convenience. For many of the same reasons -- I'm
12 on Slide 29. For many of the same reasons, that dismissal
13 is warranted under Section 305(a)(1). Forum non-convenience
14 dismissal is appropriate. The factors that guide the
15 court's discretion under forum non-convenience we submit is
16 the court's dismissal. I'll highlight only a few points on
17 this topic because essentially it is the same facts
18 ultimately that I have discussed before in relation to the
19 alleged Debtors.

20 The petitioning Creditors here are not U.S.
21 entities. They are foreign funds. They were organized
22 under the law of the Caymans. They were organized under the
23 law of Luxemburg. They are managed by U.S. advisors, or
24 they have U.S. investment advisors, but they're not U.S.
25 funds.

1 And Your Honor, if I may, I'm going to go a little
2 bit out of order, but if I may direct your attention to
3 Slide 32, this is an excerpt from the offering circular that
4 accompanied the notes originally. It stated not for
5 distribution to any U.S. persons. This offering is
6 available only to non-U.S. persons within the meaning of the
7 Regulation S and the U.S. Securities Act of 1933.

8 On the next slide, the offering circular also
9 described, notwithstanding the forum selection clause that
10 is in the indenture that relates to disputes about the
11 notes, that there was a risk that the issuer and the
12 guarantors could become subject to a concurso mercantile.
13 That is a bankruptcy proceeding in Mexico. That risk would
14 not be there if there was exclusive jurisdiction over a
15 bankruptcy case in New York.

16 And my last comment on this subject is only that
17 I'm not aware of a case that says a forum selection clause in
18 one creditor's agreement should dictate where a plenary
19 restructuring proceeding should take place. There are other
20 credit -- there's a credit agreement with a secured lender
21 that has a Mexican forum selection clause. Courts routinely
22 consider that forum selection clauses are outweighed by
23 other considerations in the bankruptcy context. And with
24 that, I will cede the podium to Ms. Cornish.

25 THE COURT: Thank you, Mr. Clareman.

1 MS. CORNISH: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MS. CORNISH: Good afternoon. Kelley Cornish from
4 Paul Weiss on behalf of the alleged Debtors. Your Honor,
5 one comment about the slide deck that Mr. Clareman has been
6 walking through, while the contents of the slide deck
7 certainly mirror and include all of the matters that I'm
8 going to cover, I'm not going to follow it verbatim.

9 THE COURT: That's fine. I take notes too --

10 MS. CORNISH: Yeah, I --

11 THE COURT: -- in case you haven't noticed.

12 MS. CORNISH: I've watched. I've seen them,
13 copious notes. Your Honor, most of the briefing in these
14 matters, and essentially all of yesterday's hearing have
15 been devoted to dealing -- or to dueling expert testimony
16 and argument about the interplay of U.S. and Mexican
17 insolvency law if TV Azteca can be forced into a bankruptcy
18 proceeding here.

19 As Mr. Clareman has extensively argued, we believe
20 that this court should dismiss these involuntary cases
21 because any Chapter 11 plan approved by this court must be
22 subjected to a do-over essentially in a full-blown Mexican
23 concurso. Mexican law in material respects is incompatible
24 with the petitioning Creditors contemplated in voluntary
25 plan in these cases resulting in undue delay, expense, and

1 value degradation in detriment of the Debtors' enterprise
2 and stakeholders.

3 Aside, Your Honor, from the abstention grounds and
4 forum non-convenience grounds that Mr. Clareman just
5 covered, there are two what we think are silver bullet type
6 independent bases for dismissal of these cases under the
7 bankruptcy code, applicable case law, and the simple
8 undisputed facts that relate to them.

9 First, Your Honor, the petitioning Creditors are
10 ineligible to bring these cases under Section 303(b)(1) of
11 the Bankruptcy Code because a portion of the claim on the
12 notes that they hold is subject -- is the subject of a bona
13 fide dispute as to amount. And that is, Your Honor, the
14 \$16.5 million redemption premium that is part of the claim
15 under the notes.

16 Although the petitioning Creditors are now trying
17 to walk away from that disputed portion of the claim on
18 their notes to avoid the standing issue here, they cannot do
19 that. Both the directing holders, which included the
20 petitioning Creditors or some of them, and the indentured
21 Trustee at their direction are seeking payment of a \$16.5
22 million redemption premium under the notes. And that issue
23 is squarely joined and pending before Judge Gardephe in the
24 district court litigation that was commenced by the
25 indenture Trustee.

1 That dispute cannot simply be circumvented here
2 for standing purposes by the petitioning Creditors. And
3 I'll come back to this argument in more detail. Second,
4 these cases should be dismissed for cause under Bankruptcy
5 Code Section 1112(b). They are nothing more than a two-
6 party dispute filed by the petitioning Creditors because
7 they lost patience with the action on the notes that they
8 directed the indenture Trustee to commence in New York State
9 court, and are frustrated with litigation pending in Mexico,
10 which incidentally, Your Honor, has done nothing to disrupt
11 their lawsuit that's pending here in the Southern District.

12 Let's begin, Your Honor, with the petitioning
13 Creditors' standing under Section 303(b)(1). To have
14 standing to commence an involuntary case under that section,
15 a petitioning Creditor must not be "the subject of a bona
16 fide dispute as to liability or amount." The case law is
17 clear that the petitioning Creditor must satisfy both the
18 liability and the amount prong of 303(b)(1). And there are
19 cases cited in the slides.

20 Also, Your Honor, each and every one of the
21 Southern District New York bankruptcy judges who have
22 considered this issue, and they include Judge Morris, Judge
23 Drain, and Judge Bernstein, plus the Ninth Circuit, the
24 First Circuit, and the Fifth Circuits have held that a bona
25 fide dispute as to a portion of a petitioning creditor's

1 claim is sufficient to render that creditor ineligible to
2 file a voluntary case under the bankruptcy code. Your
3 Honor, the full citations to those cases are, you know,
4 included in the slide decks and in our briefs. I won't go
5 through them.

6 Here, it is undeniable that a live dispute is
7 joined and is pending before Judge Gardephe with respect to
8 the noteholder's claim for a \$16.5 million redemption
9 premium under the notes. A brief review of the history of
10 the notes is illuminating for these purposes. And I will
11 reference Your Honor to Page 46 of the slide deck, which has
12 a timeline, but I'll walk through it. I'll walk through
13 some of it anyway.

14 Your Honor, the notes were issued in February of
15 2017 by TZ Azteca. In February 2021, TV Azteca announced
16 deferral of an interest payment, and subsequently also then
17 missed additional payments. Notably, and this, Your Honor,
18 is on Page 38. There's a demonstrative on Page 38 of the
19 slide deck. It relates to the petitioning Creditors'
20 purchase of the notes and the timing of it.

21 So as Slide Deck 38 -- or Page 38 of the slide
22 deck shows, the petitioning Creditors first purchased their
23 notes the day after the first missed interest payment. They
24 were not initial par purchasers. Your Honor, we've also
25 included in the joint exhibits at Pages 164 to 204 Bloomberg

1 screenshots that reflect the steeply discounted market
2 prices of the notes at points in the timeline when the
3 petitioning Creditors purchased their notes. And
4 essentially, they're somewhere in the .42 to .44 cent range.

5 As -- also, Your Honor, we included, oh, the
6 demonstrative deck, which I've already pointed you to. In
7 May of 2022, back to the timeline of the litigation and
8 events leading to the litigation, in May of 2022, the
9 beneficial holders of more than 25 percent of the notes
10 issued a notice of acceleration expressly seeking payment of
11 "premium, if any". And that's at Joint Exhibit 13 at Page
12 2.

13 On August 5, 2022, the indenture Trustee issued a
14 notice of acceleration that incidentally did not mention
15 premium, and that's Joint Exhibit 14 at Page 1. Three days
16 later, however, at the direction of the directing
17 noteholders, the indenture Trustee amended the notice to add
18 reference to a "premium". That's Joint Exhibit 15 at Page
19 1.

20 Later that month, the indenture Trustee commenced
21 litigation on the notes by filing summary judgment in lieu
22 of complaint in New York State court expressly including a
23 demand for payment of a \$16.5 million redemption premium.
24 And that's at Joint Exhibit 2, Page 22. The following month
25 very promptly TV Azteca removed that action to the Southern

1 District of New York and filed an opposition to the
2 indenture Trustee's motion in that court. And the indenture
3 Trustee subsequently filed a reply. The issue of whether a
4 redemption premium is due and owing on the note is squarely
5 joined in these pleadings and is currently pending before
6 Judge Gardephe.

7 In fact, the issue is addressed no less than ten
8 times in the parties' pleadings, and you can find those
9 pleadings, Your Honor, Joint Exhibit 140 is TV Azteca's
10 opposition and Joint Exhibit 4 is the reply. Meanwhile, as
11 I previously mentioned, I'll just note the petitioning
12 Creditors have continued to buy notes throughout this entire
13 period of time at a steep discount.

14 Probably recognizing that they had an issue
15 satisfying 303(b)(1)'s requirement that their claims not be
16 the subject of a bona fide dispute as to amount, the
17 petitioning Creditors are now trying to sidestep that issue
18 by, first omitting from their statement in support of these
19 involuntary cases any mention whatsoever of the directing
20 holders or the indenture Trustee's assertions of the
21 disputed claim under the notes for a redemption premium.

22 Specifically, Your Honor, in Paragraph 2 of their
23 statement, they intentionally incompletely state, "On August
24 5, 2022, noteholders owning a majority of outstanding
25 principal amount of notes, including the petitioning

1 Creditors, directed the indentured Trustee to send an
2 acceleration notice to TV Azteca upon which principal and
3 interest", that's the only reference, "immediately became
4 due and payable. The directing holders then directed the
5 indentured Trustee to initiate a suit in New York State
6 Supreme Court seeking a judgment for the principal and
7 interest," no reference to premium, "due under the
8 indenture." And that's at Paragraph 2, Your Honor, of their
9 statement in support. And again, they just conspicuously
10 omit from their description of their claim under the notes
11 payment of a redemption principal -- premium. Excuse me.

12 The redemption premiums I've mentioned was
13 expressly made, that claim, by the indenture Trustee at the
14 directing holders', including the petitioning Creditors,
15 direction in two places. One, if you look at the
16 supplemental notice, which I've already made reference to,
17 of acceleration dated August 8th, it reads, "The Trustee by
18 this notice declares the unpaid principal of \$400 million
19 premium accrued in unpaid interest and any other amounts
20 owed under the notes to be due and payable immediately as
21 provided under Section 6.21(a) of the indenture."

22 And then the second summary of the claim is in the
23 memo of law in support of summary judgment in lieu of
24 complaint, specifically in the list of relief that's being
25 sought. Page 6 says, "Award Plaintiff premium consistent

1 with the redemption premium at a rate of 104.125 percent of
2 the principal as of the date of acceleration, August 5,
3 2022, as provided in Section 5.1 of the indenture for a
4 premium totaling \$16,500,000." As I've mentioned, TV Azteca
5 disputes that the redemption premium is due under the Second
6 Circuit's 2017 MPM decision, and that issue has been
7 extensively brief and is pending for decision before Judge
8 Gardephe in the Southern District of New York action.

9 Your Honor, the Plaintiff's attempt to ignore the
10 bona fide dispute that exists with respect to the amount due
11 on the notes arising from the redemption premium is just
12 ineffective here. There is undeniably a pending dispute
13 with respect to a portion of the noteholder's claims under
14 the notes. If this court proceeds with these involuntary
15 cases, the noteholder's claim, including whether they can
16 collect the redemption premium under the notes, will have to
17 be adjudicated to determine the noteholder's treatment under
18 any plan.

19 The petitioning Creditors are noteholders who will
20 be bound by their class's treatment under any plan. Despite
21 their attempt to insulate themselves from ineligibility to
22 file these cases under 303(b)(1) today by purporting to
23 waive the disputed redemption premium of their claim on the
24 notes, that dispute must be resolved with respect to the
25 notes if these cases go forward.

1 Likewise, very similarly, the petitioning Creditor
2 in Mountain Dairies, Judge Morris' case that looked at these
3 issues, tried to waive disputed portions of its claim for
4 purposes of obtaining standing to file an involuntary
5 Chapter 7 case. But Judge Morris noted that, "There is no
6 doubt that the dispute over the amount of the petitioning
7 Creditor's claim would continue after the entry of an order
8 for relief." The petitioning Creditor would have this court
9 find no dispute for purposes of the threshold requirement of
10 an undisputed claim, and then have this court resolve multi-
11 faceted disputes over the amount of that claim.

12 Judge Morris found that, "Those concessions do
13 not, as the petitioning Creditor contends, eliminate the
14 bona fide dispute." She dismissed the involuntary case on
15 standing grounds. Also on abstention grounds, but it -- but
16 on standing grounds. And that's the Mountain Dairies case
17 at Page 634. Subsequently commenting on Judge Morris'
18 reasoning in a later involuntary Chapter 7 case, Judge Drain
19 in the Persico case noted that the Mountain Dairies
20 petitioning Creditor's attempt to "concede the validity of
21 the Debtor's amount of its claim as resolving their dispute
22 for the purposes of the involuntary petition was no
23 concession at all." And that's at Page 2 of the Persico
24 Westlaw -- it was an oral decision from the bench, Judge.

25 The petitioning Creditors' attempt here to waive

1 the disputed portion of their claim on the notes for a
2 redemption premium for purposes of establishing standing to
3 file these involuntary cases is the same as in Mountain
4 Dairies. In the words of Judge Drain in Persico, such a
5 concession "would not count as a waiver at all, and the
6 petitioning Creditor would not satisfy the amount in dispute
7 issue." Again, Page 2 of the Persico decision.

8 In sum, Your Honor, the petitioning Creditors are
9 ineligible to file these involuntary cases because the
10 redemption premium portion of the noteholder's claims --
11 claim under the notes is the subject of a bona fide dispute
12 in the action before Judge Gardephe.

13 Your Honor, aside from the fact that the
14 petitioning Creditors lack standing here, these cases should
15 be dismissed for cause due to what courts have recognized as
16 "a common practice, the filing of a case under the
17 bankruptcy code as a tactic in a two-party dispute" for
18 which adequate remedies exist at state law. And that quote,
19 Your Honor, is from Judge Gerber in the Murray bankruptcy
20 court level decision. And that Murray case is a really
21 important case I think in this area, and which resulted in a
22 dismissal of an involuntary Chapter 7 filing that went all
23 the way up to the Second Circuit and was affirmed in the
24 Second Circuit. And I'll be coming back to Murray.

25 Your Honor, what Judge Gerber referred to, we

1 believe, is precisely what is going on here. As we've
2 highlighted extensively throughout the proceedings, last
3 year a group of noteholders, including the petitioning
4 Creditors, directed the indenture Trustee to accelerate the
5 notes and file litigation in New York State court to recover
6 payment on the notes. TV Azteca promptly removed that case
7 to the federal district court, and the parties have been
8 litigating there primarily with respect to whether the
9 redemption premium is due and payable.

10 Fully briefed summary judgment motions currently
11 are pending before Judge Gardephe, and obviously that case
12 has been stayed by these filings. Apparently impatient with
13 Judge Gardephe and frustrated by litigation occurring in
14 Mexico, the petitioning Creditors decided to attempt to use
15 the bankruptcy code and this busy court to bring their
16 dispute with TV Azteca to a head. Incidentally, Your Honor,
17 we've mentioned this before -- actually, a separate point,
18 excuse me.

19 Incidentally, the petitioning Creditors never once
20 pressed Judge Gardephe for a decision on the motion that's
21 pending before him or advised him of any reason for
22 expediting that decision. Tellingly, the petitioning
23 Creditors' three-page preliminary statement in their
24 statement that was filed in support of these cases, if you
25 look at those three pages, and I'm not going to -- I don't

1 have a slide laying them out, but if you go back and look at
2 them and read them, you will see that that entire
3 preliminary statement speaks only of the dispute between the
4 TV Azteca and noteholders under the notes. That's it.

5 It makes no reference whatsoever to any other
6 debts or Creditors, or to any financial or operational
7 matters requiring a plenary reorganization of TV Azteca in
8 the United States or in Mexico. In fact, Judge, the
9 ultimate description of their motivation for filing these
10 cases in that preliminary statement, if you go to Page 4 of
11 that preliminary statement, I think it's the last paragraph,
12 it's quite telling. It smacks of nothing but a two-party
13 dispute.

14 It says, "The Debtor's actions leave the
15 petitioning Creditors no choice but to seek relief from this
16 court. Without intervention by this court, the noteholders
17 will be permanently harmed, stripped of any due process
18 rights through baseless litigation in Mexico, all of their
19 contractual rights under their New York law governed
20 indenture, and left without a remedy to seek recovery." All
21 about the notes and frustration.

22 Judge Gerber in the Murray case dismissed, as I
23 mentioned, an involuntary Chapter 7 case "for cause under
24 Section 1112(b) when a single Creditor tried to invoke the
25 involuntary provisions as its personal judgment enforcement

1 device." In Murray, as I've mentioned, the parties were
2 engaged in highly contentious protracted litigation for
3 years until the judgment Creditor ultimately filed an
4 involuntary Chapter 7 petition before Judge Gerber. In
5 dismissing the case, Judge Gerber focused exclusively on the
6 purpose and policy underlying the bankruptcy system
7 explaining that "bankruptcy is a collective remedy with the
8 original purpose which continues to this day to address the
9 needs and concerns of creditors with competing demands to
10 debtor's assets and with the understandable desire that the
11 debtor's assets not go to the swiftest or most aggressive of
12 them.

13 "Over the years, the bankruptcy system's purposes
14 expanded to accomplish other important social goals to bring
15 an end to debtor's prison, to provide for a discharge, to
16 rehabilitate debtors, and thus to capture going concern
17 value for the benefits of the creditor community as
18 contrasted to selling off assets for scrap and to save jobs,
19 and to benefit the communities in which debtors operate. If
20 any of those goals needed to be achieved here, a bankruptcy
21 case likely, if not plainly, would make sense."

22 But Judge Gerber -- that's the end of the quote,
23 Judge Gerber concluded in Murray that none of those policy
24 goals were implicated. Rather, he found that the bankruptcy
25 court cannot properly be employed as a rented battlefield to

1 achieve ends for which it never was intended as a collection
2 mechanism to achieve none of the goals the court just noted.
3 And in reaching his decision, Judge Gerber, I would note and
4 emphasize, gave no consideration whatsoever to how long it
5 was taking or how difficult it had been and was for the
6 petitioning creditor to obtain the relief it was seeking in
7 the years of underlying litigation. I just -- I noticed
8 that you were -- I was just waiting. That's okay.

9 THE COURT: No, that's all right.

10 MS. CORNISH: In the years of underlying
11 litigation. And in fact, I will also note in terms of
12 adequate remedy of law, in Murray, the judgment creditor was
13 seeking relief, had the ability to get expanded relief in
14 the bankruptcy case under the bankruptcy codes as opposed to
15 in the underlying litigation. And that did not factor in at
16 all.

17 Judge Gerber, rather, went on to list the
18 undisputed facts in Murray demonstrating there was nothing
19 but a two-party dispute before him. Most are remarkably
20 similar to these cases, and you'll see in the slide deck we
21 actually line these up, but I'll go through them now orally.
22 Judge Gerber noted or listed the facts as follows. This
23 court is the most recent battlefield in the longstanding
24 two-party disputes. This case has been brought solely as a
25 judgment enforcement mechanism. There are no creditors

1 competing with each other to be first in line to collect on
2 claims. There were no other creditors to help.

3 Assuming arguendo that there were any fraudulent
4 transfers that could be avoided and then recovered, the
5 petitioning Creditor could -- Creditors could do so on its
6 own without resorting to the bankruptcy court. The
7 petitioning Creditor has adequate remedies under non-
8 bankruptcy law, obviously referring, Your Honor, to the
9 pending litigation and etcetera. Further, no assets would
10 be lost or dissipated in the event that the bankruptcy case
11 did not continue.

12 The petitioning Creditors' interest in the
13 judgment -- there it was a judgment enforcement proceeding
14 as opposed to a pending litigation -- and its ability to
15 enforce the judgment against the Debtor will remain.
16 Finally, the Debtor does not need or want a discharge. Your
17 Honor, similar undisputed facts are present here. First,
18 the petitioning Creditors filed these cases while litigation
19 that they commenced in New York State court is pending
20 providing them an adequate remedy under non-bankruptcy law.

21 I would also note that there's potentially an
22 involuntary proceeding in Mexico as well, but we can focus
23 on the New York State pending litigation. No other --
24 second, no other creditors have come forward here in this
25 matter seeking the assistance of a bankruptcy process in the

1 U.S. or Mexico, for that matter. Although the pendency of
2 these cases has been widely publicized, including in the
3 financial press and in TV Azteca's securities filings. As
4 Your Honor knows, Diamond, a judgment Creditor, did appear
5 at the initial hearing in these cases, but has shown no
6 interest in participating since then and forcing TV Azteca
7 into a full-blown bankruptcy. Presumably, Diamond is
8 content to continue its own two-party dispute with TV Azteca
9 outside of this court.

10 There is currently no evidence of dissipation of
11 TV Azteca's assets in Mexico, here, or otherwise, or a race
12 to the bottom to collect on debts by multiple creditors or
13 constituents of creditors. There is no evidence that TV
14 Azteca is in need of a comprehensive financial or
15 operational restructuring. Rather, the petitioning
16 Creditors' reorganization plan that they intend to file
17 after terminating TV Azteca's exclusivity would be their
18 intent.

19 That plan, that contemplated plan on its face
20 demonstrates that they do not intend to effect a true
21 reorganization of TV Azteca's debts or business as described
22 by Judge Gerber in Murray or is contemplated. To the
23 contrary, their purpose -- they propose, excuse me, to force
24 the entire TV Azteca enterprise into prolonged expensive and
25 value destructive U.S. involuntary Chapter 11 cases that

1 would admittedly have to be followed by a full-blown Mexican
2 concurso. That would affect the notes and try to affect
3 equity, although as we've, we think, shown through Mr.
4 Mejan's testimony can't do it. Everyone else under that
5 contemplated plan is unaffected. We don't need the
6 bankruptcy court to, as they contemplate, treat the taxing
7 authorities and oversight of the ITF "in accordance with
8 applicable non-bankruptcy law." Don't need the bankruptcy
9 courts for that.

10 In addition, reinstating the revolving credit
11 facility for Banco Azteca, don't need that. Reinstate
12 general unsecured Creditors' claims. So again, this smacks
13 of a two-party dispute. Nobody else is being affected other
14 than equity that cannot be. Your Honor, the petitioning
15 Creditors' plan is not a reorganization operationally or
16 financially at all. Again, no Creditor claims other than
17 the notes will be affected.

18 As the Second Circuit said in Murray, "After
19 considering the purpose of involuntary petitions, the goals
20 of the bankruptcy code, and the bankruptcy court's authority
21 under Section 1112(b)" the Second Circuit affirmed Judge
22 Gerber's dismissal in Murray of the involuntary chapter
23 filing for cause explaining that, "Such a remedy exists as
24 an avenue of relief for the benefit of the overall Creditor
25 body. It was not intended to address the special

1 grievances, not matter how legitimate of particular
2 Creditors. Such Creditors must seek redress under state law
3 in the state courts and not in the bankruptcy court."

4 The reasoning and holding in the Murray decisions
5 by Judge Gerber all the way up to the Second Circuit we
6 think are applicable here, Judge. The indenture Trustee and
7 TV Azteca have been litigating over the notes in an action
8 commenced by the indenture Trustee, which provides the
9 noteholders with an adequate remedy at law. There are no
10 other Creditors that have come forward seeking to
11 participate in a reorganization of TV Azteca here or in
12 Mexico.

13 The petitioning Creditors' own contemplated plan
14 would seek to impair or affect only the noteholders' claims
15 other than equity, which they cannot do. As demonstrated in
16 their own statement in support of these cases, Your Honor,
17 the petitioning Creditors are not proposing a reorganization
18 of TV Azteca for the benefit of all of its stakeholders and
19 to maximize value and recovery on all of their claims in
20 interests, or to avoid the future dissipation of assets or a
21 liquidation of TV Azteca, or to preserve TV Azteca as a
22 going concern.

23 None of those goals are implicated here. Rather,
24 the petitioning Creditors have decided to change forums to
25 exert maximum pressure to recover on their notes, which they

1 purchased with eyes wide open and at a steep discount.
2 Judge Gardephe is already handling that two-party dispute.
3 These cases should be dismissed for cause under Section
4 1112(b) of the Bankruptcy Code. Thank you, Your Honor.

5 THE COURT: Okay. I guess I'll just start asking
6 my questions, and then you two can figure out who's
7 answering them. Okay. When I reviewed the pleadings before
8 Judge Gardephe, which as you imagine I have not only
9 reviewed the ones that are in the binders, but I've reviewed
10 all of them, as well as all of the ones in the state court
11 because I'm allowed to take judicial notice of anything
12 that's happening in some court, it didn't seem to me that
13 there was any argument made by the alleged Debtors as to the
14 principal amount and whether that's due and owing. Is that
15 right?

16 MR. CLAREMAN: Your Honor, that's correct. That
17 argument was not made in the pleadings in the matter before
18 Judge Gardephe.

19 THE COURT: But yet we've -- I've read the
20 pleadings in Mexico in the -- I'll call it the unserved
21 injunction litigation, and certainly the language of those
22 pleadings goes beyond what one would expect in an
23 injunction, which is just to stop things from happening.
24 But the underlying action beyond just the initial injunction
25 seems to argue about whether there was validity to various I

1 guess acceleration was his word given. Is that right?

2 MR. CLAREMAN: That is correct with respect to
3 pleadings in Mexico, yes.

4 THE COURT: Okay. All right. So can you explain
5 why the Debtor is making one argument in the United States
6 and another argument in Mexico?

7 MR. CLAREMAN: Well, the way I would answer it is
8 just to say that I'm not a Mexican lawyer, and the arguments
9 that can be made in a Mexican court are arguments that
10 Mexican lawyers have made, will make, if they're -- and if
11 they are -- should be dismissed, they should be set aside
12 and not --

13 THE COURT: How about there's no jurisdiction
14 based on the contract that you all agreed to in the
15 indenture for the Mexican court to be dealing with any of
16 those issues? And the fact that you all have commenced
17 actions seeking that is in violation of your contract. Now,
18 look, it's clearly not what's before Judge Gardephe. He has
19 no idea based on the papers that are filed before him, at
20 least that I could see, about what's going on in terms of
21 Mexico unless people have filed these things that I've only
22 recently seen with the translations to him.

23 So how would he then know that this argument is
24 being made? But regardless, you know, the Debtor signed a
25 contract that says -- and I think no one disputes this part

1 of it. I understand there's a dispute about what does it
2 mean vis-a-vis my proceeding here today, but I think at
3 least with respect to the issue of where issues about
4 adjudication of the notes, and what's owed under the terms
5 of the indenture, and whether potential provisions of the
6 indenture were complied with or not, what's owed based on
7 the indenture, that this is all subject to New York law and
8 a New York forum by virtue of the agreement of the parties
9 in Section 11.7.

10 So I'm having a really hard time understanding
11 what the legal basis is for this litigation and it happening
12 elsewhere. The reason that I'm asking about this is you're
13 asking me to take a position as to what's going on Judge
14 Gardephe's court with respect to whether there's a bona fide
15 dispute. Okay. Understand the argument on the premium.
16 Obviously, I've read Momentum myself of course. Never mind
17 that we were involved in it. Not me, but other people years
18 ago. And of course I'm familiar with cases such as American
19 Airlines, some of the other things that Momentum cites to
20 because some of those cases I was involved in myself, and
21 also the state court issues with respect to premiums.

22 So I understand there's a dispute there, and I
23 think that's laid out before Judge Gardephe, and I get that.
24 But it seems to me that I have a secondary dispute going on
25 here and that no one's asserted before Judge Gardephe. But

1 yet it is asserted in two different courts about the
2 principal. So what position am I supposed to take with
3 respect to that? It seems to me that I have to take a
4 position that, based on my reading of this indenture that
5 wasn't asserted in front of Judge Gardephe, it can't
6 possibly be a bona fide dispute. Because a bona fide
7 dispute has to comply with what people agree to.

8 MR. CLAREMAN: So, Your Honor, this is -- I would
9 answer your question as (indiscernible). I don't disagree
10 with what Your Honor has said as a matter of New York law
11 with respect to the indenture and what it means. And I --
12 arguments have not been made in front of Judge Gardephe that
13 are -- no arguments inconsistent with what Your Honor has
14 said have been made in front of Judge Gardephe.

15 THE COURT: Right. I've read it. Yep.

16 MR. CLAREMAN: And what I would suggest is if
17 there is an issue in terms of actions being taken that are
18 in some manner interfering with Judge Gardephe's ability to
19 handle the case, Judge --

20 THE COURT: He needs to know about them.

21 MR. CLAREMAN: That is -- of course that's true.
22 That's true, but that request can -- that sort of relief can
23 be sought by litigants in that case. There is a --

24 THE COURT: For certain, but again, respectfully,
25 you know, when you're litigating in front of a bankruptcy

1 court or a district court, there is things that are the law
2 that parties all understand. And I think what you all are
3 arguing -- which I understand the argument, and I've read
4 the indenture. I obviously have my own opinion. My own
5 opinion doesn't matter because this won't be just decided by
6 me necessarily. I guess maybe it could matter, but it
7 doesn't matter for now. Judge -- it's in front of Judge
8 Gardephe. I have my own opinion about it.

9 But I certainly understand the arguments that are
10 to be made. I understand issues about premiums. Obviously,
11 my previous life I did a lot of litigation on premiums. I
12 know the issue. I understand it. This is, to me, taking an
13 argument that the parties have agreed should be in front of
14 it if someone's going to make it, in front of Judge Gardephe
15 and his court, or for that matter my court if I kept this
16 proceeding, but some court in New York that has
17 jurisdiction. And it shouldn't be being made somewhere
18 else. It almost makes me have to perhaps make a finding
19 about the bona fide nature of that.

20 And if -- I'm just raising it so the people
21 understand why this is bothering me in particular in
22 addition to people not complying with contracts. But I also
23 note that the fact that the court doesn't know about it
24 bothers me a lot. And it bothers me a lot not for something
25 that's a legal reason because I accept the arguments that

1 were made yesterday by your -- by the parties that they
2 don't have to necessarily legally tell people until they're
3 served and everything. But there's also professional
4 conduct. We go by that in our courts.

5 And so I think not telling people, most
6 importantly not telling the tribunal if it's an issue so
7 that they're aware of it, is a problem for me. And I'm just
8 noting that. That has nothing to do with my ruling except
9 perhaps adding an additional potentially dispute, which may
10 or may not be bona fide that's out there. But I note that I
11 don't think that that -- this is appropriate conduct on the
12 part of parties.

13 And so you know, you can -- however this goes, I'm
14 just putting this on the record so -- because perhaps, who
15 knows, Judge Gardephe might read my statement that he
16 understands that I was distressed and don't think that
17 that's appropriate conduct, and that he does need to be
18 notified even in a stayed litigation about what's going on.
19 So I think parties need to consider that.

20 All right. Going on to other questions, if I deny
21 the motion to dismiss, would the alleged Debtors actually
22 comply with their obligations under the bankruptcy code?
23 This seems to be an issue that actually is important.
24 Because on one hand, if the Debtors tell me they're not
25 going to comply, they're not going to file schedules and

1 statement of affairs, they're going to ignore their
2 fiduciary duties, they're not going to attend 341 meetings,
3 they're not going to file monthly reports, they're not going
4 to propose a plan. In other words, if I don't dismiss this
5 litigation, they're just going to completely act in their
6 own way acquit their fiduciary responsibilities, that could
7 make things very difficult for me. Also for anybody
8 enforcing.

9 On the other hand, if you actually complied with
10 all those things, proposed your own plan, which would then
11 be consensual on your part, whether it got confirmed or not,
12 you'd have a consensual Chapter 11 proceeding in some ways,
13 potentially, or certainly one that you had input in. And
14 certainly you have exclusivity, and there's a process for
15 that. And that might be a different situation.

16 One of the things I'm trying to figure out in the
17 abstention issue is how likely is this going to be a
18 scorched earth situation. That's my worry. And so I'm
19 going to ask you what are you going to do.

20 MR. CLAREMAN: Well, let me address the question
21 in a couple of different ways because I have a few
22 reactions. So number one, of course, speaking for counsel,
23 we will comply with orders of this court. There would be, I
24 anticipate at a number of points, issues of conflict of laws
25 that would need to be addressed in terms of what can be done

1 as a matter of Mexican law and what -- and how that
2 interacts with the bankruptcy code. So I would anticipate
3 that those issues would arise.

4 Ultimately, our argument is not that these cases
5 should be dismissed because or in anticipation of obstinance
6 or scorched earth tactics by the alleged Debtors.
7 Ultimately, even in a cooperative from the alleged Debtors'
8 perspective, in order to be enforceable in Mexico binding on
9 shareholders, binding on the government, binding on the
10 secured Creditors, binding on trade Creditors, the consent
11 of the Debtor doesn't get you all the way there. You have
12 to have a further recognition proceeding in Mexico that runs
13 into the exact same problems they serve at.

14 THE COURT: Well, maybe and maybe not. I mean, no
15 disrespect. I mean, if Group Aeromexico had started as an
16 involuntary and ended up as a plan proposed by Group
17 Aeroméxico that was voted in favor by their shareholders,
18 which it was -- and for full disclosure, I did work on Group
19 Aeroméxico before I took the bench. I wasn't there at the
20 end, but I was there at -- for a big chunk of it. So I --
21 there, that's one example of where there was a consensual
22 proceeding here in the U.S. that didn't involve having to go
23 back to Mexico to do anything.

24 I mean, that could happen here if the parties did
25 that. I don't think that's impossible. I understand that

1 if the parties don't have an agreement or if the parties
2 want to -- do not have the support of the Mexican
3 government, the Mexican government doesn't have their rights
4 in here in this process, the Mexican government is adversely
5 affected, other Creditors' rights are adversely affected in
6 Mexico, you might end up with what you're saying. I
7 completely understand that even if everybody agreed.

8 But there are examples. Granted, they didn't
9 start out as involuntaries. I understand that. But if the
10 Debtors -- it was the Debtors' plan in those circumstances,
11 the Debtor isn't going to propose a plan here either that
12 doesn't comply with the laws in Mexico. I can't believe
13 that. So it strikes me as it's not impossible to get to
14 that role if people are willing to cooperate and recognize
15 those things. It doesn't mean every proceeding would have
16 to end up there.

17 I think it could. I'm not disagreeing with that.
18 Certainly if the Debtors aren't on board with it and I
19 confirm the plan over their objection, again hypothetically,
20 I definitely think you'd end up back in Mexico in that
21 circumstance. I really don't disagree with that. I think
22 that would be a problem. You'd have to go back to Mexico
23 then. But I think it is possible for that to occur.
24 Sometimes people actually reach arrangements in proceedings
25 if they don't start out the right way.

1 I mean, that's the problem with what you're
2 arguing on the other side. You're arguing about an
3 involuntary concurso as being an option. Okay. Maybe.
4 Maybe it is, maybe it isn't. Why do I say maybe? I say
5 maybe because you have to decide you're not going to get
6 sued before the superior court on that injunction language
7 unless it gets vacated. It's a risk. People have to decide
8 they're going to do it.

9 Again, you may -- you know, your expert certainly
10 doesn't think it's a problem. The other side thinks it's a
11 problem. You have issues. No one knows. Hasn't been
12 before anyone. What they did agree on is that the concurso
13 court can't override it, so you are definitely going to be
14 dealing with whatever the superior court thinks. I have no
15 idea what the superior court thinks, but that's an issue.

16 Okay. You also have to pass the insolvency test,
17 which is harder in an involuntary because there's two parts.
18 It's also potentially harder because of the issues that have
19 been raised in the Mexican proceeding that -- involving the
20 acceleration notices possibly, but it also may be that
21 simply the test can't be met because the company isn't doing
22 that badly. I have no idea. No one has any idea sitting
23 here today for sure. So then that isn't really an option if
24 you can't meet the insolvency test. And so you're telling
25 me that that's the best other option for the other parties,

1 and I'm not really sure that's the best other option.

2 Then the other argument that you all are making to
3 me is that, okay, they should just get their judgment in
4 front of Judge Gardephe, which believe me, I know Judge
5 Gardephe. He is not a person to sit on things. And one of
6 the things that Ms. Cornish said is right. I think that if
7 he knows there is a fire that needs to get done, he actually
8 does do that. He's one of the district court judges that
9 actually moves reasonably fast. And I know this from
10 experience.

11 So he rules. He -- there's a judgment, but we
12 heard the testimony about the judgment enforcement process
13 in Mexico, which is obviously not short either. It's a few
14 years, etcetera. In the meantime, no disrespect, you have
15 notes that are maturing next year, okay? The fact that
16 somebody is going to sit here today and tell me that this
17 isn't a restructuring scenario, I just -- I'm sorry. I have
18 a hard time buying that because, you know, we are talking
19 about a fairly large amount of notes. We are talking about
20 the fact that those are going to have to be dealt with,
21 whether now or you manage to hold them all off until 2024
22 from this litigation.

23 Let's just say your litigation strategy works.
24 Because no offense, you have one too, and that occurs. You
25 have maturity. They're going to be due then. So the

1 parties need to really be -- so your argument that they
2 should be filing an involuntary concurso, I should be
3 dismissing this, and there should be no restructuring going
4 on isn't going over very well with me. And that's where my
5 problem is. So that's going to get to some of my other
6 questions later on.

7 MR. CLAREMAN: Okay.

8 THE COURT: All right. So first question -- next
9 question is are the noteholders in Diamond the only U.S.
10 Creditors right now where there's an argument that there's a
11 past due amount outstanding in the United States with
12 respect to U.S. Creditors that you're aware of. I'm not
13 saying you agree that that's true.

14 MR. CLAREMAN: Yeah. So why don't I start with
15 the last question if I may? So the last question that you
16 asked about whether there's any U.S. creditors that we're
17 aware of, Diamond has a disputed claim. I wouldn't describe
18 Diamond as a U.S. creditor. I think it's a Dutch entity.
19 They have a contingent litigation claim that is in state
20 court. I'm aware of a litigation claim that's been pending
21 for a very long time brought by a Mexican singer that is
22 pending in Texas. Again, there's a contingent litigation
23 claim.

24 There is -- there has been brought to our
25 attention that there are claims, I think it's approximately

1 \$20,000 or less that have been asserted by a tax authority
2 in California. We believe that those taxes are -- not
3 agreed that they're due. We believe that they're associated
4 with properties that were sold. That is what we are aware
5 of.

6 THE COURT: Okay.

7 MR. CLAREMAN: Shall I move to the other questions
8 that Your Honor --

9 THE COURT: Yes.

10 MR. CLAREMAN: Okay. So I'll address the question
11 about the prospects of a Chapter 11 case here. Certainly
12 the origins of this case, not only are they involuntary,
13 there's clearly a lot of dispute and litigation between the
14 parties. It is --

15 THE COURT: Which just makes me feel like I should
16 send you all to mediation. How do you feel about that?

17 MR. CLAREMAN: Well, I -- Your Honor, I'd need to
18 -- I would need to discuss that with my co-counsel, with the
19 client, but we believe fundamentally that these claims
20 should be dismissed. That is what we're arguing here, so
21 I'm sorry to not answer.

22 THE COURT: I understand. I get that. But -- I
23 get that, and I understand that. And if the parties don't
24 feel like they want to sit down and have a conversation with
25 each other, that's fine. We'll go forward with litigation.

1 I'll rule. Don't worry. But my point to you is that sooner
2 or later, people are going to have to try to resolve these
3 issues. And whether you're arguing with me, you know,
4 you're making the argument to me that this shouldn't be done
5 through a collective proceeding, it doesn't need to be done
6 through a collective proceeding, well, probably every pre-
7 pack on earth with like no holder issues either end up as an
8 out-of-court, end up with a pre-pack.

9 We have a lot of issues where people just have
10 proceedings that deal with the notes and nothing else in a
11 proceeding. Everything else leaves -- gets untouched.
12 Otherwise, we would never have pre-packs. So there are
13 processes we have here to deal with that, and that's I'm
14 sure true in Mexico also because the Mexican experts both
15 talked about pre-packed concursos. So I'm not saying the
16 U.S. is the only way to do that.

17 But there obviously are insolvency proceedings
18 that go on that don't reorganize the entire company or don't
19 affect everybody and are very limited as to who is being
20 affected in it. We have it here, and apparently they have
21 it there. And there's reasons for that because you have to
22 figure out sometimes how you're going to deal with the fact
23 that we have noteholders who all are -- you know, who are,
24 you know, all over the world, and you have to consents from
25 them, and you need a certain amount. Not always so easy to

1 do without everybody consenting.

2 And also, that sometimes you only need to
3 restructure your funded debt. And even here, maybe not even
4 all your funded debt because obviously it doesn't seem like
5 you have issues with your bank facility. Anyway, I just --
6 I'm having a hard time accepting the argument that this
7 isn't a situation where the parties really need to be
8 dealing with the ultimate issue, which is what are you doing
9 with this. You know, you can litigate all you want. At the
10 end of the day, there's going to be some kind of judgment
11 here.

12 Whether it's just a judgment on the interest and
13 the principal, or it's a judgment on the redemption, that's
14 where you're headed with Judge Gardephe. Just leaving that
15 aside for the moment, what does that take you to? I mean,
16 the parties have to eventually get somewhere on this.
17 Unless the company really has a check right now that they
18 could write to them or they're planning on writing to them
19 when they -- when maturity happens, which I don't really
20 think is the issue based on the declarations that were
21 submitted.

22 So I'm having a hard time understanding the
23 resistance to the fact that there needs to be some kind of
24 restructuring here, whether it happens here or in Mexico.
25 And you guys haven't -- the Debtors, alleged Debtors,

1 haven't filed concursos either. So you obviously haven't
2 gotten to the point where you're prepared to submit yourself
3 to that.

4 MR. CLAREMAN: That's correct. So to answer Your
5 Honor's question about mediation, we would agree to a
6 mediation if that was -- if that -- if the Court felt that
7 that was appropriate or helpful under the circumstances. I
8 -- but returning to the prospects in the absence of a
9 mediating agreed outcome, which would --

10 THE COURT: Mm-hmm.

11 MR. CLAREMAN: -- necessarily need to involve a
12 lot of parties given the Mexican law issues and would not be
13 a simple matter, ultimately, in the cases that have pursued
14 restructuring in the U.S., the four cases that managed to
15 have restructurings here successfully, and I'm, you know,
16 not a Mexican lawyer, but pre-packs in Mexico I presume are
17 the same way, that there needs to be broad consensus in
18 order for them to work. And so from the standpoint of
19 today, in the absence of a mediation, I'm just talking about
20 if we --

21 THE COURT: Mm-hmm.

22 MR. CLAREMAN: -- proceed, and if the motions were
23 denied, we would be in a situation of uncertainty starting
24 from the standpoint of a litigious posture with the
25 noteholders, because that is where the posture is today.

1 There are other parties in Mexico whose interests are
2 unlikely to align with -- and clearly I think don't align
3 with the noteholders. I'm talking about equity. It is a
4 majority controlled company. So I think that launching into
5 a Chapter 11 case with an uncertain outcome and no basis
6 today to believe it would be successful ultimately runs into
7 all of the problems that I was describing.

8 Because ultimately, you can have the Chapter 11
9 process. It would, I think we can all agree, would likely
10 be expensive and time-consuming in the absence of a rapid
11 agreement. And then you would have all the problems
12 associated with needing to go back to Mexico for enforcement
13 if not -- if all of the stakeholders were not in agreement.
14 And there are a significant number of other stakeholders
15 that have rights that may be implicated by whatever happens
16 here.

17 THE COURT: Understood. Since the filing of the
18 petitions by the petitioning Creditors -- I'm asking this
19 for a reason. The record requires it actually for the
20 abstention cases, have any restructuring negotiations taken
21 place?

22 MR. CLAREMAN: Since the filing of the petitions?
23 No. There were discussions prior to the filing of the
24 petitions at various points in time. That has been
25 referenced I think in some of the briefing that's been

1 filed.

2 THE COURT: Right, but that they were
3 unsuccessful.

4 MR. CLAREMAN: Correct.

5 THE COURT: And I know the cases seem to point to,
6 on abstention, some of the things that they look at are
7 whether or not there's another remedy that's out there
8 that's imminent. I mean, the case you cited to that I
9 believe was Judge Bernstein's case, the -- you know, there's
10 -- oh, actually, no, Judge Gropper's case, there's
11 definitely issues about whether or not there's another
12 proceeding that's out there and whether or not there's
13 options available. And some of the things that they look at
14 is whether or not there is out-of-court restructuring
15 discussions going on, other types of negotiations, or input
16 somewhere else. So we don't have another in-court
17 proceeding --

18 MR. CLAREMAN: Right.

19 THE COURT: -- that which we know about --

20 MR. CLAREMAN: Right.

21 THE COURT: -- that's an insolvency proceeding
22 anyway. A restructuring proceeding. Okay. Do the alleged
23 Debtors have sufficient cash on hand today to repay the
24 notes?

25 MR. CLAREMAN: I have -- I'm not in the position

1 to answer that question.

2 THE COURT: Okay. That's fine. You've answered
3 my question there. What is the case law support that you
4 have for informed non-convenience as a separate legal basis
5 for a dismissal on the 11 case? Other than is that court
6 case, which was a 7, and I think one other case. I haven't
7 really found any cases about that in the context of 11. And
8 in fact, in our district, there had been some cases that say
9 that that's not something that should be permitted. And
10 Judge Drain in the Kerwin case, for example, basically said
11 that he didn't believe that that is even an argument in
12 connection with this as a separate argument.

13 It's obviously part of the analysis you do under
14 305, but he was talking about it as a separate defense or
15 basis for dismissal. And I think the reason that he felt
16 that is that, while that's an argument sometimes for a
17 specific dispute between parties in an adversary proceeding,
18 and certainly there are cases that use it as a basis for
19 dismissal in an adversary proceeding, it's not something for
20 a -- what I would describe as a fulsome, overall
21 restructuring, you know, process. And that there hasn't
22 been anything in our circuit that supports that. Do you
23 have any cases that support that that you could cite me to?

24 MR. CLAREMAN: Other than Jacor, no.

25 THE COURT: Okay. Fine. With respect to your

1 Multicanal I guess discussions, my understanding about that
2 case, and I might be wrong, was, wasn't there an Argentinian
3 proceeding pending?

4 MR. CLAREMAN: There was, Your Honor.

5 THE COURT: Okay.

6 MR. CLAREMAN: You're correct. And if I may
7 address that with a little --

8 THE COURT: Sure.

9 MR. CLAREMAN: -- some light connection, so there
10 -- in Multicanal, yes, there was an Argentine proceeding
11 pending. And I believe that there was a similar set of
12 circumstances (indiscernible). But the -- so then there's
13 not a foreign pending proceeding here, at least a foreign
14 restructuring proceeding. And so that is -- that obviously
15 the case here, but what we are saying the experts ultimately
16 agreed to is there will need to be a foreign proceeding. So
17 there is not one pending now, but there is only -- there
18 needs to be.

19 And the only court that actually can effectuate a
20 restructuring ultimately given the effect of 293, given the
21 effect of the establishment in Mexico and the agreement on
22 that point, there would ultimately need to be a second
23 proceeding. And so there is not one today, but the text of
24 Section 305(a)(1) does not require there to be a pending
25 proceeding in order for a dismissal to be appropriate.

1 THE COURT: Okay. And I think these are probably,
2 sorry, questions for Ms. Cornish, so I apologize for this.
3 So the argument that you are making about Murray in the
4 Second Circuit decision, obviously I've read the cases, so
5 one of the things I think that the court looked at there, at
6 least my reading of it, is first the fact that they were
7 really using it as judgment enforcement. We don't have a
8 judgment here.

9 MS. CORNISH: Correct.

10 THE COURT: So we're not -- this is not yet
11 judgment enforcement. If --

12 MS. CORNISH: Right.

13 THE COURT: -- you guys come back, if I dismissed
14 it and it went to Judge Gardephe, for example, and then you
15 got the judgment and then it came back again, maybe not even
16 to me, some -- maybe to somebody else, then I could see that
17 argument being made. But here today, that's not what we
18 have before me. And then the argument that you made about
19 an adequate remedy outside of the bankruptcy process, again,
20 I'm having a hard time accepting that. And it's not because
21 I don't think it's impossible for somebody to just get a
22 judgment on the notes, go to Judge Gardephe, get a judgment
23 on the notes, and then go try to collect on that in Mexico,
24 that certainly is possible.

25 And it -- I think the testimony from both of the

1 experts is that it would take a couple of years. You know,
2 at least a year and eight months I think was the shortest we
3 got out of anybody. So a little while, but it was -- would
4 be possible potentially to collect on it. But is there
5 anything else you're pointing to that's an adequate remedy
6 for the parties?

7 MS. CORNISH: Yeah. I mean, look, it obviously
8 wasn't at issue in Murray, and this case is a very unusual
9 situation.

10 THE COURT: True.

11 MS. CORNISH: But we think there are two possible
12 paths here going back to Judge Gardephe, getting a judgment,
13 and seeking to enforce that judgment. Or going down to
14 Mexico and instituting an involuntary concurso. And you
15 know, the abstention argument is if that's the path, if the
16 path is a concurso, starting here and going through the
17 whole process here makes no sense. Because for all the
18 reasons I'm not going to, you know, repeat the arguments,
19 and that's why we're arguing for abstention with respect to
20 that other alternative path.

21 THE COURT: Right.

22 MS. CORNISH: So I --

23 THE COURT: But you're not -- your clients aren't
24 willing to avail themselves of the Mexican courts. And as
25 you know, the insolvency test is much harder in an

1 involuntary than it is an involuntary because you have to
2 meet two parts of that test. And I'll just say for whatever
3 it's worth, probably everyone -- most people in this court
4 anyway I know who knew me before know, look, I looked at the
5 financial information that I have, which is not great. It's
6 not detailed enough to figure out the answer to this
7 question, and I'm certainly not a visitador. But I'll just
8 say I can't figure out for certain that today you would meet
9 both of the insolvency tests, and that's even if I assume
10 that the petitioning Creditors win on every one of their
11 arguments before Judge Gardephe, which I'm not saying will
12 happen.

13 But I'm just saying that I can't figure out that
14 that's a certainty. And that's leaving aside the fact that
15 they might get enjoined from doing it. Again, I'm not
16 arguing that the experts -- that anyone's expert is wrong or
17 right. I think it's just very uncertain because they could
18 still be subject to somebody arguing that it violates the
19 superior court. Maybe you would never argue that. Maybe
20 they would never argue it. Maybe it would never come up.

21 But if it did, it might be that you can't even
22 commence the action right now. Maybe that could change in
23 the future. I get that because those injunctions could go
24 away potentially. But I'm just saying to you right now I'm
25 not sure you could do that without a risk.

1 MS. CORNISH: Understood that there are risks, and
2 they've been identified. But I guess the point is nobody's
3 tried at this point. And we have the testimony of Mr. Mejan
4 that he does not -- and I understand that's maybe cold
5 comfort, but there is that testimony. But nobody's tried.
6 And --

7 THE COURT: I understand.

8 MS. CORNISH: -- the insolvent -- the issue of
9 satisfying the insolvency test, that's -- I don't think that
10 goes away because you're going to have to go back down to
11 Mexico anyway.

12 THE COURT: It doesn't go away, but it goes away
13 depending on the circumstances that you're in. I really
14 appreciate the arguments of people are making, but in my
15 world, I see a lot more restructuring opportunities than you
16 all do I guess. Because I'm -- and you know, maybe it's
17 just that I'm not in the middle of the fighting with the
18 parties, and you know, that's just not my perspective. But
19 I understand of course sometimes people reach out-of-court
20 restructuring. If people were talking, maybe that could
21 happen. Maybe it won't. Don't know, okay?

22 MS. CORNISH: Yeah.

23 THE COURT: Then there's -- in Mexico there's a
24 voluntary concurso. I assume that if this manages to go on
25 until there's a maturity, there might not be a lot of issues

1 about it. There might have to be a voluntary concurso at
2 some point. There might not. I don't know. But that's one
3 option. The Debtors certainly allege Debtors have that
4 option, and they will have an easier time meeting the
5 insolvency test right now because only one part -- or in the
6 future because only part is necessary.

7 Then you have the involuntary concurso. Okay.
8 Someone has to decide they're not going to take any risks on
9 the injunction issue, and they have to meet both parts of
10 the insolvency test, also part. Or we have Chapter 11. It
11 has happened. People have used Chapter 11 to restructure
12 major Mexican corporations before. Generally, voluntarily.
13 I grant you this is a unique one here, but it is a
14 possibility. It's a way to restructure whether it's now or
15 in the future, that's all I'm saying to you.

16 So I think personally just sitting here as a
17 court, I see a lot more opportunities that may or may not
18 involve having to go back for a concurso in the future.
19 Even if I dismissed these cases now, at some point, unless
20 the parties reach an agreement, which they're not going to
21 do if they don't talk, we're going to -- you're going to be
22 at a point where there'll have to be something that happens.
23 And I don't think -- you know, I'm not sure the fact that
24 they could something and they chose to do something else
25 means that it's inevitable that it will have to go back to

1 the Mexican court.

2 It would if you all don't reach an agreement.
3 That's true. But that's within people's purview, both
4 sides. Not just one. I've been berating the Debtors.
5 Trust me, I'll be berating -- alleged Debtors. I'll be
6 berating the other side too about this. So --

7 MS. CORNISH: Your Honor, we don't feel berated.
8 You're entitled to all of your questions. I do want to make
9 one note. I have consulted with Mr. Cohen with respect to
10 your question to Mr. Clareman as to, you know, what would
11 happen, how would our -- what would our client do if these
12 cases went forward and your -- all of your comments about
13 the prospects of a consensual situation, a pre-pack.

14 I understand that sometimes one (indiscernible)
15 notes gets restructured through a pre-pack, and that is in a
16 sense a reorganization. It's not a reorganization of the
17 whole company, but it is. All we can say about that right
18 now is that the parties have been obviously in litigation
19 for quite some time. They haven't had negotiations for some
20 time. And we have no reason to believe at this point in
21 time that TV Azteca is going to participate here in a
22 consensual proceeding. We have no basis to make that
23 representation to Your Honor.

24 THE COURT: I understand. Okay. That -- I mean,
25 that's sufficient. I understand you can only tell me what

1 you can tell me.

2 MS. CORNISH: Yeah.

3 THE COURT: And I relate that.

4 MS. CORNISH: Yeah. And I -- you know, if past is
5 prologue, there is certainly a real possibility that this
6 would not be a cooperative proceeding.

7 THE COURT: Okay. And I guess I'm really trying
8 to have a -- trying to figure out for me, again, this is
9 just for me because I think you all know I'm not -- I'm -- I
10 don't share card work, but this is not going to be an easy
11 decision. But my point to you is I'm happy to just go ahead
12 and render my decision here at some point at the end of --
13 you know, after I've reviewed the transcript and everything
14 else and I write a decision. Because I know this will be
15 going up on appeal. No disrespect to anybody.

16 So that's okay. That's what happens in these
17 cases. I've learned over the years not surprisingly. But I
18 think what I would -- what I'm trying to decide on my side
19 is, you know, is that really the best course here, or
20 letting the parties talk first the best course here. That's
21 why I asked my question.

22 MS. CORNISH: Yeah. Understood. And I think Mr.
23 Clareman made clear that Your Honor mentioned mediation. I
24 think we can pretty confidently say that we would
25 participate in that. We haven't had our clients actually

1 tell us that, but if that's what Your Honor's referring to.

2 THE COURT: Yeah. I'm thinking about it because
3 honestly just sitting here listening to a day's worth of
4 testimony, and obviously I've read all the papers before,
5 and I've read everyone's cases, and everything else before I
6 took the bench for sure yesterday, I -- you know, I just --
7 I feel like I could rule and send you guys back to three
8 years of litigation minimum. Maybe. Maybe a little
9 shorter. Who knows? And I'm not sure that would be a
10 helpful thing. Or we could have a lot of litigation before
11 me if I kept it. I'm not sure that's the best course
12 either.

13 So I feel like I'm trying to see if there's a
14 better course here than my just deciding this. Not because
15 I don't want to decide it. I'm happy to decide things.
16 That's what my job is. But because I'm not sure it's the
17 best result for the parties given where things are. So I
18 just note that for whatever it's worth. All right. Well,
19 we can talk about that again after we finish closing
20 arguments and everything like that about that. But I thank
21 you for answering my questions.

22 MS. CORNISH: Okay. Thank you.

23 THE COURT: That's all my questions.

24 MS. CORNISH: Thank you, Your Honor.

25 THE COURT: All right. Okay. Mr. Qureshi, you're

1 up.

2 MR. QURESHI: Thank you, Your Honor.

3 MS. CORNISH: And I don't even know whose this is.

4 MR. QURESHI: I'll grab the 101.

5 MS. CORNISH: I don't know whose this is.

6 MR. QURESHI: Your Honor, good afternoon. For the
7 record, Abid Qureshi, Akin Gump on behalf of the petitioning
8 Creditors. Your Honor, before I hand up my dec, if I could
9 just address a couple of the questions that the Court just
10 asked of the Debtors.

11 THE COURT: Mm-hmm. The alleged Debtors.

12 MR. QURESHI: I'm sorry. The alleged Debtors.

13 Your Honor, let me start with why is the Debtor making one
14 argument in Mexico and another one in the United States.
15 And all I want to --

16 THE COURT: Are you clairvoyant?

17 MR. QURESHI: I'm sorry?

18 THE COURT: I said are you clairvoyant? How are
19 you going to answer that one?

20 MR. QURESHI: I am not other than to tell Your
21 Honor that at the time that we briefed the issues before
22 Judge Gardephe, we, the indenture Trustee in that case, did
23 not know of the existence of the injunctions because they
24 had been received on an ex parte basis and not yet served on
25 the indenture Trustee. They clearly did know.

1 Your Honor, with respect to the Court's question
2 of well, where does this take us? What do we now? Well,
3 Your Honor, first off, the debt has matured because it has
4 been accelerated. So it's not 2024. It's matured.

5 THE COURT: Okay. I'll accept your statement
6 there for your purposes because it certainly was your
7 argument in front of Judge Gardephe. Of course I have my
8 own opinions, but I'm just saying to you there -- certainly
9 that's not all that's been argued in Mexican court anyway.

10 MR. QURESHI: Fair enough. That is absolutely
11 true. Your Honor, we are all in favor of mediation, but
12 under the right circumstances. And we think the right
13 circumstances are that in order for relief be entered first
14 and then mediation take place. And the reason for that,
15 Your Honor, is we truly don't know what's going on because
16 of the injunctions that they have received that prohibit the
17 publication of any financial information.

18 Our concern absolutely is that assets are being
19 removed from this jurisdiction. One hundred percent we
20 believe that that is taking place, and that is a concern
21 that we have. And in fact, Your Honor, we believe that that
22 explains the conduct. What these Debtors are saying to Your
23 Honor is rather remarkable. They are saying we will not
24 cooperate with the federal bankruptcy court that has
25 jurisdiction. Think about that, Your Honor.

1 Now, why would they make that statement? Because
2 their strategy is not to restructure our debt. It's to
3 avoid it completely. As I noted, Your Honor, in the
4 timeline in opening statement --

5 THE COURT: Mm-hmm.

6 MR. QURESHI: -- that we know very little about
7 the financial situation, but we know this. There was more
8 than enough money to make the coupon payment in February of
9 '21 and also in August of '21, and maybe even after that.
10 How do we know? Because they voluntarily redeemed a total
11 of \$221 million in the local Mexican Sabora Stat. They made
12 a choice. They said we're going to pay our Mexican
13 Creditors and we're going to avoid our U.S. Creditors.

14 Now, why would they do that? Well, it certainly
15 is a set of circumstances that gave rise to our concern that
16 while all of this was going on, assets have been leaving the
17 U.S. jurisdiction. We can't prove it. We have no
18 information. So Your Honor, certainly we think that the
19 best course, the most practical course to actually make some
20 progress given our experience with these Debtors, I think
21 the only way, and in light of the statement Your Honor just
22 heard about their refusal to cooperate, the only way that
23 they will be a serious and good faith participant in a
24 mediation is if this court takes jurisdiction over these
25 cases and doesn't dismiss it.

1 And Your Honor, and I'll get to this in greater
2 detail during my argument, but the idea that these Debtors
3 can stand before Your Honor and say we have no reason to
4 believe that TV Azteca will ever cooperate with this court,
5 and at the same time argue that Your Honor ought to abstain
6 from exercising jurisdiction, I'm sorry, Your Honor, it's
7 absurd. And there's no legal basis for it. It cannot be
8 the case that that kind of bad conduct is used to reward the
9 Debtor to give them what they are asking for, which is a
10 dismissal of these cases.

11 So Your Honor, if I could hand up a dec that I
12 plan to use for argument.

13 THE COURT: Sure. Thank you.

14 MR. QURESHI: So Your Honor, if I could start by
15 just giving the Court a bit of a preview of how I plan to
16 proceed through argument, first I'll talk about the burden
17 of the Debtors' there in this proceeding. Second, I'll
18 address why they failed to meet their burden in
19 demonstrating that this is just a two-party dispute that
20 should be dismissed under 1112. Third, I will talk about
21 the abstention argument. And in connection with the
22 abstention argument, I will return to what Your Honor asked
23 about, which is Chapter 11 scenarios, what might happen in
24 this case.

25 Fourth, I'll address the conflicting expert

1 testimony that Your Honor has heard on the Mexican concurso
2 procedures. Fifth, I will talk, and I'll keep it brief,
3 about forum non-convenience. And sixth, the injunctions.
4 And I plan to conclude, Your Honor, with what I discussed
5 yesterday at opening, which is the Globopar case. So
6 turning to the petition itself, if I could ask Your Honor to
7 turn to the first slide.

8 THE COURT: Okay.

9 MR. QURESHI: Your Honor, the petitions that have
10 been filed to commence these involuntary proceedings, they
11 satisfy the requirements of Section 303 of the
12 (indiscernible). So there are four. There is one that is
13 in dispute, and that is the one that I'm going to address,
14 and that is that the claim is subject to a bona fide A
15 dispute. But first, Your Honor, I would like to turn -- and
16 this on the next slide, to the petition itself. And there
17 are of course a lot of them. And we have excerpted from
18 just one here. And this shows what it is, that the
19 petitioning Creditors are Claimant. And the petitions are
20 all the same.

21 What it says is that -- oh, I'm sorry, Your Honor.
22 Slide 2 is the stipulated facts. And Your Honor asked about
23 this too. What is their position? Well, clearly different
24 positions depending on the day and depending on the court.
25 In this court, they have taken the position that the

1 principal and interest is due and owing. So that's all we
2 can say.

3 Your Honor, I'm sorry. The next slide is Slide 3,
4 and that is the petition. And what that shows is that the
5 claim that is being filed as the basis for this involuntary
6 petition is for principal and interest. And we also
7 extracted on this slide, Your Honor, a footnote from our
8 opposition brief. If it weren't clear enough from the
9 petitions themselves, which make no claim to any kind of a
10 premium, a redemption premium, another premium, or a
11 premium, if any, it is only requesting principal and
12 interest.

13 The footnote says, to be clear, the petitioning
14 Creditors are not seeking to collect the redemption premium
15 in these Chapter 11 cases. So let's turn, Your Honor, to
16 Ms. Cornish's silver bullet. That gun, from my perspective,
17 Your Honor, fired a blank, not a silver bullet. And the
18 reason is the litigation before Judge Gardephe, Your Honor,
19 the parties to that litigation are the indenture Trustee and
20 TV Azteca. The petitioning Creditors are not a party to
21 that dispute.

22 Now, Ms. Cornish says, wow, the petitioning
23 Creditors directed the Trustee, and the petitioning
24 Creditors were behind it. Your Honor, the petitioning
25 Creditors on their own don't hold enough notes to direct the

1 indenture Trustee. So what Ms. Cornish is asking Your Honor
2 to do is to impute into our involuntary bankruptcy petitions
3 an issue that another party chose to litigate in the other
4 case. And what we have done in these petitions is to make
5 as clear as we possibly could in the petitions itself that
6 we are not claiming a redemption premium. And then to say
7 it again in our brief that we are not seeking a redemption
8 premium.

9 Mr. Cornish talked about a case -- and I think I
10 have a note somewhere -- oh, the Mountain Dairies case. And
11 in the Mountain Dairies case, Judge Morris, when dismissing
12 that involuntary petition, said that essentially, she's not
13 going to be duped into a situation where the creditor says
14 there's no dispute for purposes of commencing an
15 involuntary, and then come back and ask the Court to resolve
16 at a later stage a number of disputes.

17 I know Ms. Cornish did not mean to suggest, Your
18 Honor, that we, on behalf of the petitioning creditors,
19 would ever come back to this Court and start arguing for a
20 redemption premium after the statements in our petition, in
21 our brief, and by me on behalf of our clients here today.

22 So, next, Your Honor, I would like to turn -- and
23 this is on the next slide in the book, which is Slide 5. I
24 apologize, Your Honor. It's Slide 4 and 5. So, what we
25 have done on 4 and 5 is we have listed the cases that are

1 cited in the Debtors' brief that purportedly support the
2 proposition that there is a -- that when there is a bona
3 fide dispute, the case should be dismissed and you can't
4 somehow abandon the disputed portion of the claim.

5 Your Honor, what makes every single one of these
6 cases relevant is that in each one the dispute concerned a
7 claim that was part of the petition, quite logically so.
8 Here, the claim that Ms. Cornish spent so much time talking
9 about is not part of the petition. It's in a different
10 litigation between different parties in a different court.
11 So, there is no silver bullet, Your Honor.

12 Now on to the two-party dispute. So, Ms. Cornish
13 directed the Court to Section 1112 and case law thereunder
14 for the proposition that if it's a two-party dispute, the
15 case needs to be dismissed. And again, it's their burden to
16 establish that dismissal is appropriate.

17 So, the first thing I wanted to do, Your Honor, is
18 to talk about, again, what would happen in this respect if
19 an order for relief were to be entered. Well, eventually,
20 whether we have a cooperative Debtor or not, there would be
21 a claims bar date. And when that claims bar date comes, the
22 indenture trustee would know that, file a proof of claim on
23 behalf of all the beneficial holders of the notes. And
24 whatever other creditors might show up would know of that
25 bar date as well.

1 And each holder of the notes is a unique creditor.
2 Each holder would be entitled to vote on a Chapter 11 plan
3 and participate in the process. We have no idea, Your
4 Honor, we the petitioning creditors, of how many beneficial
5 holders of the notes might be out there. We certainly know
6 that it's more than three.

7 In fact, Your Honor, there is some record evidence
8 that there are approximately 30 holders of the notes. How
9 do we know? Because TV Azteca sued them in Mexico. Those
10 are the number of parties that are named in the proceedings
11 in which they got injunctions. So we know at least that
12 there are a lot of noteholders who no doubt would want to be
13 repaid and would have the right to participate in this
14 proceeding.

15 If Your Honor could next turn to Slide 6. And
16 Slide 6 addresses Diamond. So, how do we know that this
17 isn't a two-party dispute? Well, there's Diamond. How do
18 we know that Diamond is a creditor? Because they say so,
19 Judge. This is a quote from their response and a
20 reservation of rights that they filed before Your Honor.
21 Paragraph 7. Paragraph 7. "Diamond is a creditor of the
22 bankruptcy estates of the alleged debtors in an amount not
23 less than the \$25 million arising from a judgment that they
24 have."

25 So, it's undisputed that this is not a two-party

1 dispute. It isn't a two-party dispute, even if it were just
2 the notes. And there's more than that. There is at least
3 Diamond. And Your Honor, the idea that somehow Diamond
4 doesn't count because they didn't stand up before Your Honor
5 and say, we support the involuntary petition, is neither
6 here nor there. There's no obligation -- there's no case
7 law under 1112 that says, well, you're only creditor in an
8 involuntary petition if you stand up and support the
9 involuntary. They're a creditor.

10 Their lack of participation in this proceeding --
11 and I would note that their counsel has been here every day,
12 has participated in the depositions, has had access to
13 discovery, so to say they're not participating isn't quite
14 accurate either -- but the fact that they have taken no
15 position is neither here nor there. It is entirely
16 irrelevant.

17 Your Honor, on to the next slide, which is -- was
18 referenced by Mr. Clareman when Your Honor asked are their
19 other creditors. These are the tax liens from the LA County
20 Tax Assessor's Office. There are four of them. They are in
21 the record. JX-389, 390, 391 and 392.

22 Now, in aggregate amount, Mr. Clareman is right,
23 it's only about \$20,000. But show me the provision in the
24 Bankruptcy Code that says you don't count as a creditor
25 unless you have a huge claim. They are a creditor. That is

1 the record before Your Honor.

2 So, Your Honor, I won't spend any more time on
3 that argument. It clearly must fail on the record before
4 the Court.

5 Your Honor, if I could next turn to abstention.
6 And if I could direct the Court, please, to Slide 8. And
7 first, Your Honor, under Section 305(a) of the Bankruptcy
8 Code, a court may dismiss a case if the interests of both
9 creditors and a debtor would be better served by such
10 dismissal. On this slide, we have extracted a couple of
11 cases that talk about the burden.

12 First of all, it clearly rests on the party
13 seeking abstention, which is, of course, the alleged
14 debtors. Secondly -- and this comes from what I concede is
15 my favorite case, Your Honor, Globopar -- where the court
16 said abstention is an "extraordinary remedy." And the court
17 also emphasized in (indiscernible) that both creditors and
18 debtors must benefit from dismissal. It's not a balancing
19 test. It's not, is one party hurt or does one party gain
20 more than the other. It's look at both and see what
21 happens.

22 On this record, Your Honor, this is an utterly
23 impossible burden for the Debtors to comply with,
24 particularly in light of what Ms. Cornish has told the Court
25 today, that they're not going to cooperate. Or to be

1 accurate, that there is no reason to believe that they will
2 cooperate.

3 Your Honor, so let's turn, if we could, to Slide
4 9. I put this here now -- I'll come back to it, Your Honor,
5 but these are the factors. There's seven of them. And
6 after I review the record, I will come back to it one at a
7 time.

8 Before then, I now want to turn to what happened
9 in these Chapter 11 cases. And so, let's talk about that at
10 Slide 10. And Your Honor asked the question. There are two
11 alternatives, and I have coined them good debtor or bad
12 debtor. Ms. Cornish answered the question. I didn't know -
13 - I now know -- it's bad debtor. But let's look at what
14 would happen if we had a good debtor.

15 Well, what would a good debtor do? A good debtor
16 would marshal assets, ultimately would arrange for DIP
17 financing, if that was required. Take advantage of all of
18 the tools that Chapter 11 has to see if there are any
19 contracts or leases or other parts of the business that
20 could benefit from restructuring. Negotiate with
21 stakeholders. How about that? Ultimately propose a plan of
22 reorganization. Prosecute and confirm that that plan in
23 accordance with -- wait for it -- their fiduciary duties
24 because they have even in Mexico. Try to maximize value for
25 the benefit of all creditors. It's simple.

1 How do we know it works, Your Honor, for a Mexican
2 company? Slide 11 -- and Your Honor brought this up --
3 Aeroméxico, Satmex, Posadas, Maxcom, all cases of companies
4 that were unquestionably primarily Mexican companies.
5 Whether we want to say COMI in Mexico or not, I'm fine with
6 that. These are Mexican companies. And they all
7 restructured successfully in Chapter 11, And in all cases
8 it was voluntary. Good debtor. It's possible they are
9 choosing not to.

10 They are choosing to be bad debtor. That's on the
11 next slide, Your Honor, Slide 12. So what does the bad
12 debtor do? Well, actually the bad debtor is worse than what
13 I envisioned when putting this slide together. So bad
14 debtor maintains the injunctions that preclude payment of
15 the noteholders.

16 By the way, just as an aside on the injunctions,
17 Your Honor may recall in the supplemental declaration that
18 was put in, they actually have a brief due tomorrow in
19 Mexico on the appeal from the injunction. I was expecting
20 good debtor to show up and say, Judge, we're letting you
21 know we're going to withdraw that injunction because COVID
22 is over. I was wrong. Bad debtor. They're going to keep
23 those injunctions in place, it appears.

24 They're going to force creditors to use the tools
25 that are available to Chapter 11 to conduct an

1 investigation, figure out what assets they have. Have they
2 been spiriting assets out of the United States? What is
3 their liquidity like? What capacity do they have to pay?
4 We have no idea, because there are injunctions that prevent
5 us from accessing that information. Creditors might need to
6 propose a DIP facility to pay for the cases.

7 Ultimately, if they're not going to participate,
8 creditors might have to terminate exclusivity and propose a
9 plan. Not might; we would have to do that. Might a Chapter
10 11 trustee be necessary? Certainly. That's a possibility.

11 Your Honor, and not to hide from the fact that in
12 the bad debtor scenario, there absolutely could be follow-on
13 litigation in Mexico. Nobody is suggesting that the bad
14 debtor scenario would be easy. The whole point of the bad
15 debtor scenario, which again is what they have said they
16 want to do, is to make it as difficult as possible. But
17 that can't be a reason to dismiss the cases, Your Honor.
18 That would make no sense. Not supported by the law and
19 fundamentally inequitable.

20 So now, Your Honor, I would like to turn to the
21 experts and their divergent opinions. So these are the ones
22 that I will cover. And to be clear, Your Honor, there are
23 more than just these that the experts disagree on. Is an
24 involuntary Chapter 11 ever capable of being recognized in
25 Mexico? Professor Mejan says no; Mr. Guerra says yes.

1 Second issue. Can a concurso court determine that
2 the Debtors, all 35 of them, have a COMI in the United
3 States. Again Professor Marjan says, no; Mr. Guerra says,
4 yes. Do the Debtors have an establishment in the United
5 States? They disagree on that too. And then finally is an
6 involuntary Chapter 11 plan ever capable of being enforced,
7 as distinct from recognized in Mexico?

8 So those are the issues that I will cover. Let's
9 start, Your Honor, if we could, with recognition of an
10 involuntary. And this is on Slide 14. So, Your Honor will
11 recall that on cross-examination, I took Professor Mejan
12 through Article 296, and he agreed with me that Article 296
13 is mandatory. It uses the word "shall". It is not
14 permissive; it is mandatory.

15 He further agreed with me that in these
16 involuntary Chapter 11 cases, a foreign representative would
17 be able to comply with the four subsections that are
18 identified in Article 296. Having also agreed that the
19 language is mandatory, what would then follow if one is
20 guided by the statute is recognition of either a foreign
21 main or a foreign non-main proceeding.

22 Now, Professor Mejan did attempt to walk back a
23 little bit his opinion, and just how firmly he believed or
24 under what circumstances he believed an involuntary was
25 incapable of recognition. And so he needed to be impeached,

1 which by the way, happened several times.

2 And as a result of that, on the next slide, Your
3 Honor, is the portion of his deposition testimony that is
4 part of the record. And he was very clear in his
5 deposition. "Is it your testimony that it is impossible for
6 any involuntary Chapter 11 case to be recognized under the
7 LCM? Answer: Yes."

8 So, now let's turn to COMI. And Your Honor has
9 heard Mr. Clareman at length talk about how, in their view,
10 it's just ridiculous, to put it bluntly, that Mr. Guerra
11 could ever conclude that these Debtors have a COMI in the
12 United States.

13 So let me start, Your Honor, with -- again, this
14 is in the record -- COMI under the LCM, under the Mexican
15 concurso law, is not determined in the same way that it is
16 under Chapter 15. It is a different process. What Mr.
17 Guerra testified to, it flowed from his understanding of the
18 statute and how the statute is written. And for Mr. Guerra,
19 Your Honor, COMI is clearly not a comparative exercise.
20 Right? The analysis is not, in his view, compare the
21 contacts Mexico to the contacts with the United States and
22 decide on that basis where the COMI is.

23 Were that the test, there is no doubt that the
24 COMI could not be in the United States, because
25 unquestionably these debtors are Mexican and they have more

1 contacts with Mexico than with the United States. Instead,
2 his opinion flows from the LCM. And he starts with -- he
3 referred Your Honor to three articles, 15, 15 bis, and 17.

4 And under Article 15, which I have on Slide 16,
5 what he relies on in particular is that holding companies
6 and subsidiaries or affiliates form a business group. And
7 this provision also says the commercial bankruptcy
8 proceedings of business organizations that are part of the
9 same business group shall be consolidated. And so he
10 concludes from this language in Article 15 that the 35
11 Debtors constitute a business group, and therefore can be
12 consolidated.

13 Your Honor, he next turns to Article 15 bis, which
14 I have extracted on the following slide. And in this
15 Article, it provides that in the case of one or more
16 merchants that are members of a business group that is
17 facing the same situation, their creditor or creditors may
18 claim -- may file their joint judicial declaration of
19 commercial bankruptcy. And the Article says the bankruptcy
20 shall be conducted under one proceeding.

21 So Mr. Guerra's testimony is that there is an
22 established business group under Article 15 that consists of
23 all the Debtors. And we then turned to Article 17, which is
24 also on this page, and under Article 17, it's provides that
25 any judge with jurisdiction where the merchant has its

1 domicile -- and this is the link between jurisdiction and
2 domicile that Mr. Guerra testified to -- can oversee a
3 bankruptcy filing.

4 On that basis, Mr. Guerra concluded that U.S.
5 debtors being domiciled in the U.S. have a COMI here. It's
6 a rebuttable presumption, but he concluded that as a result
7 of their domicile, they have a COMI here. And he explained
8 that on that basis, in light of these provisions of the LCM,
9 a Mexican court could conclude that all 35 Debtors therefore
10 have their COMI in the United States.

11 Now, Mr. Guerra's analysis did not stop there
12 because he did look at the contracts that have been entered
13 into by the U.S. Debtors, and he did examine the nature of
14 the contacts of those U.S. Debtors to the United States. To
15 be clear, he did not do that for all 35 Debtors, but he did
16 for the U.S. Debtors. And he concluded that there was no
17 evidence that he was aware of that would rebut the
18 presumption that because of the domicile of those entities,
19 their COMI is in the United States.

20 Your Honor, let me now turn to the next issue that
21 divides the experts, which is the question of establishment.
22 And for that, I'd begin on Slide 18, if I may. Your Honor,
23 on Slide 8 in the bottom right hand is an excerpt from Mr.
24 Mejan's report. Your Honor will recall this provision from
25 the cross-examination, where he says, "Based on the

1 Rodriguez declaration, I do not believe the Debtors maintain
2 an establishment. And at a minimum, it would be contested."
3 And then he goes on to say, "Because there are no offices or
4 employees." So he acknowledges that this is a litigable
5 issue in Mexico. Is there an establishment or not?

6 There was much discussion about the importance of
7 employees and offices, of the lack thereof. I think
8 ultimately, Your Honor, both experts acknowledge that it's a
9 broader test. You've got to look at more than just
10 employees and offices, although Professor Mejan doesn't say
11 that in his report, he got there.

12 But then let's look at what the record says. And
13 Your Honor, I should have said this earlier and I'll say it
14 now, so that these decks don't go to people they shouldn't
15 go to. Slide 19 has one piece of information that is
16 confidential. I am not going to mention it here and this
17 book is not going on the record. Sorry I didn't mention
18 that earlier, but I think everybody here is covered by the
19 protective order.

20 So, Your Honor, I'm going to now talk about a
21 number of contacts with the U.S. And to be clear, on Slide
22 19, the blue box at the top of the page that has some
23 numbers in it, I'm not allowed to say what those numbers
24 are. I am allowed to say they're big. And I believe that
25 they are.

1 So this page discusses the contract between a U.S.
2 and Univision. That fact is not confidential. Mr. Mejan
3 not only did not review this contract, he wasn't aware of
4 it. What he was aware of was a prior contract with
5 Univision that has expired. And if Your Honor turns the
6 page, this is the prior contract. The prior contract ran
7 from 2016 through 2023. And in the Rodriguez declaration,
8 Mr. Rodriguez mentions that the value of the prior contract
9 -- somebody will get me the number; I believe it was two
10 hundred and fifty--some-odd-million dollars that this entity
11 received under the old contract. Your Honor now knows the
12 number under the new contract, which I will state on the
13 record. Professor Mejan says, well, the old contract is
14 irrelevant because it's expired, because it was expired as
15 of the petition date. He's wrong, Your Honor, because
16 establishment -- \$259 million was the value of the prior
17 contract -- thank you.

18 Your Honor, Professor Mejan is wrong when he says
19 the expired contracts are irrelevant for purposes of an
20 establishment. Why? Because a critical element of
21 establishment is the non-transitory nature of the economic
22 content. So you can't ignore what happened before the
23 petition date. He ignores it. So, what happened here?
24 From 2016, all the way under the extended contract through
25 2030, this U.S. Debtor under this U.S. contract, with a U.S.

1 counterparty, is going to earn hundreds of millions of
2 dollars. That is relevant to whether there is an
3 establishment in the United States.

4 Your Honor, next, Slide 21. So 21 and 22, Your
5 Honor, contain a list of contracts. They are all in the
6 records. We have indicated the JX number for each of them.
7 The first chart on Page 21 indicates in force active
8 contracts where there is a U.S. counterparty to the
9 contract. The checkmark column -- and there is a checkmark
10 beside seven of those contracts -- indicate that for those
11 contracts, there was an earlier one that has since expired.
12 And again, it demonstrates continuity. Non-transitory
13 presence in the United States.

14 The next chart, Your Honor, is a list of the
15 expired contracts. Again, so that Your Honor can see how
16 long a business has been established in the United States,
17 how active that business has been. And here, the column
18 with the checkmarks, and there are six, indicates contracts
19 that have expired but that have been renewed. Again,
20 because we believe that is relevant for purposes of an
21 establishment. Mr. Guerra looked at this information.
22 Professor Mejan did not.

23 Your Honor, Slide 23. Slide 23 contains signature
24 pages from a contract with PGA, again extracted from
25 documents that are in evidence. So, why is this here? It's

1 here, Your Honor, because Professor Mejan testified that it
2 matters, in his mind, to the establishment analysis where
3 the contracts were negotiated, where the contracts were
4 signed. So he says it's important, but at the same time, he
5 says he has no idea because he didn't look at the contracts.
6 Didn't ask the question.

7 So we know from the record, Your Honor, at least
8 with respect to the PGA contracts, Your Honor can see that
9 the signatory in all of these contracts -- and there are
10 three -- is a gentleman by the name of Horacio Medal. And
11 at the top of the page, it indicates that he is a manager of
12 Azteca Sports. And that excerpt is from JX-85. It's a list
13 of directors that was produced by the Debtor. And that
14 document produced by the Debtor says that he is a manager of
15 that entity and that his residence is Miami, Florida. And
16 he is a signatory on all of these contracts.

17 Can I represent definitively that he was in Miami
18 when the contracts were signed? I cannot. But certainly
19 the best evidence we have is that these contracts were
20 executed by a manager of a U.S. Debtor, apparently not an
21 employee according to Mr. Rodriguez, because he says there
22 are none, but a manager, whatever that is, in Miami.

23 Now, Your Honor, on the next slide, Slide 24, on
24 the right side is information that we pulled from Mr.
25 Medal's LinkedIn profile. It's in the record. It's JX-386.

1 And Mr. Medal indicates here what his work experience is.
2 And he describes it, Your Honor can see, Azteca
3 International Corporation, 16 years and four months, and he
4 gives his positions. First, the Director of Legal affairs,
5 then a Vice President and Chief Legal Officer, and more
6 recently -- and it does say -- then it says under Senior
7 Vice President and Chief Legal Officer, the entity as of
8 December of 2019, is GSI Management, USA.

9 And so, Your Honor also heard testimony about a
10 services agreement. That's also extracted on this page.
11 And that services agreement is between GSI, so the entity
12 that this Mr. Medal is apparently the SVP and Chief Legal
13 Officer of, and a TV Azteca entity. And GSI, we know, is a
14 U.S. entity. We know it has offices in Florida.

15 And under this agreement, we know that this U.S.
16 entity performs legal and consulting services on behalf of
17 the Debtor. And we know that its Chief Legal Officer was
18 the general counsel at TV Azteca entities from 2000 until
19 2019, when GSI was apparently established, at which time he
20 became the Senior Vice President and Chief Legal Officer
21 there.

22 Curiously, though, Your Honor, if the Court goes
23 back to Slide 21 for a minute -- I'm sorry -- Slide 23, the
24 PGA contract excerpts, Mr. Medal, in 2021, is executing
25 these contracts on behalf of Azteca Sports Rights LLC.

1 So you know, Mr. Rodriguez says we have no
2 employees in the United States. We have somebody called the
3 manager. We have this GSI entity shares an office with or
4 has the same address as this Azteca entity. We have Mr.
5 Medal executing contracts on behalf of a U.S. debtor.
6 That's the record, Your Honor.

7 So, Your Honor, to address a few additional
8 contacts with the United States, if I could ask the Court to
9 turn to Slide 25, please? In the record are the number of
10 trademarks that various Debtors hold in the United States.
11 Two dozen or so trademarks; more than two dozen, I believe.
12 On this page, what I've highlighted simply the most recent
13 seven, because these are all trademarks that were applied
14 for or registered in the United States in 2023. Again, not
15 considered by the good professor.

16 Trademarks in the United States certainly suggests
17 certainly suggests business activity in the United States.
18 Otherwise, what would be the point of trademarks? Seven of
19 them in 2023 certainly suggests that the activity going on
20 in the United States is not all history.

21 Your Honor, on Slide 26 -- and Your Honor may
22 recall this exhibit from the cross-examination of Professor
23 Mejan -- and as Your Honor heard and is in the record, this
24 is a press release from January of 2023. And it is a press
25 release between two entities. Icara, not a debtor, not

1 affiliated with TV Azteca, as far as we know, and TV Azteca.

2 So, Your Honor, doesn't have to take my word for
3 what TV Azteca is trying to do in the United States. Take
4 the word of Mr. Jorge Gutiérrez, the paid TV Director for TV
5 Azteca Internacional. What does he say? He says the Azteca
6 Now app, which is a joint product with TV Azteca, "will
7 target a potential audience of more than 52.5 million U.S.
8 Residents, for whom Spanish is their primary language." Not
9 my words, Your Honor. That's the record. And again, not
10 something Professor Mejia considered.

11 So, Your Honor, on to the last of the expert
12 issues that I planned to address, which is whether an
13 involuntary Chapter 11 plan could ever be enforced in
14 Mexico. Now, Mr. Clareman, actually, Your Honor, did me a
15 favor because he stated more clearly than I can why it was
16 that I told Your Honor at opening that the Mexican issues,
17 they don't help the Debtors with their abstention arguments
18 at all.

19 What Mr. Clareman told you is that a do-over of
20 any plan of reorganization that might ever be confirmed in
21 this court is inevitable. So he's saying it too. Bad
22 debtor. Because that's the only circumstance in which there
23 needs to be a do-over in Mexico.

24 Now, the reasons that are offered, and that were
25 offered by Professor Mejia, and that Your Honor heard from

1 Mr. Clareman about as to why a do-over would be necessary.
2 First, they talk about the telecoms regulator. Well, again,
3 not an answer, Your Honor, because Aeroméxico, Satmex and
4 Satcom -- I may have just butchered the names -- but three
5 of those four entities at least we know are highly regulated
6 entities. It's in the record. The experts don't disagree.
7 They all had regulators that have the same rights as the IFT
8 does under the LCM, and they all managed to get their
9 regulators onboard with implementing a Chapter 11 plan in
10 Mexico.

11 Next, there was a lot of discussion about public
12 policy and Mexican law, and how it would be impossible to
13 enforce a Chapter 11 plan because there is no way it could
14 ever comply with Mexican public policy. Well, again, not
15 true. We know it's not true because it's been done in this
16 record by at least four Mexican Debtors.

17 Lastly, Your Honor, I point -- and it's extracted
18 on this Slide -- to Article 307 of the LCM. Because what it
19 says is that a concurso court, to the extent necessary, can
20 modify a Chapter 11 plan to comply with Mexican public
21 policy. And Your Honor heard this from Mr. Guerra. He
22 explained it. Well, if -- in the case of an involuntary,
23 yes, there needs to be a concurso. But it's not a do-over
24 because there's a plan. And what the conciliator would do
25 in Mexico is start with that plan. Why? Because the

1 conciliator is trying to be efficient. The conciliator is
2 not assuming a bad debtor.

3 So the conciliator would look at the Chapter 11
4 plan and say, does this make sense? Does it comply with
5 Mexican law? Does it comply with Mexican public policy? If
6 it does, maybe it makes sense to move forward with this
7 plan? If it doesn't, maybe there are some changes that need
8 to be made. It's not a do-over, Your Honor.

9 So, Your Honor, switching gears -- and I'll try to
10 speed it up for this section -- forum non conveniens.
11 Again, we don't think it applies here at all. But just
12 briefly review the standard, because I don't think it can be
13 met, again, the Debtor bears the burden, and like with
14 abstention, it's a heavy burden. Great weight is given to
15 the plaintiff's choice of forum. In this circuit, three
16 factors are considered, and they are set forth at the bottom
17 of this slide, Your Honor. And I will move through them
18 rather quickly.

19 And the first, on Slide 29, the petitioning
20 creditor's choice of forum is entitled to substantial
21 deference. We've quoted a couple of cases from the Second
22 Circuit in the Southern District on this slide. That choice
23 of forum should "rarely be disturbed. The greater the
24 plaintiff's or the lawsuit's bona fide lawsuits connection
25 from the United States and to the forum of choice, the more

1 that the considerations of convenience favor the conduct of
2 the lawsuit in the United States, and the more difficult it
3 will be for the defendant to dismiss on form non-grounds.

4 So, what do we have in this case? Well, we've got
5 on Slide 30, Your Honor, two of the petitioning creditors
6 with their primary place of business in the United States.
7 In the case of Cyrus, it's New York; in the case of
8 Contrarian, it's Connecticut. We have the note itself.
9 Slide 31. As Your Honor is well aware, New York related
10 provisions all over this indenture. Right? Notice
11 provisions, submission to New York law, submission to the
12 exclusive jurisdiction of New York courts, in this very
13 borough of Manhattan.

14 And that, Your Honor, is not the only contract in
15 which the Debtors have submitted to the jurisdiction of U.S.
16 courts. On Slide 32, we have a few more that are in
17 evidence. So, Diamond -- Your Honor, this is at ECF 15;
18 this is in their response to the automatic stay and they
19 state in their pleading -- ah, okay, thank you -- Diamond
20 states in their pleading that its contract with the Debtors
21 has a New York forum selection clause.

22 And Your Honor, Mr. Giller saved the day again by
23 telling me that the next two contracts are in fact
24 confidential, so I won't talk about them, other than to say
25 the next two contracts have New York law, in the case of

1 one, and in the case of the second, both a New York law
2 provision and exclusive jurisdiction of New York courts.

3 So, next slide, Your Honor, 36, and I think this
4 one should be easy. Mexico is not an adequate alternative
5 forum. An alternative forum is adequate, according to the
6 case law, if it permits litigation of the subject matter
7 dispute. Your Honor, we are being pummeled by ex parte
8 injunctions. We don't know when the next letter rogatory is
9 going to show up with another one. The Debtors apparently
10 don't feel the need to disclose when they have one in their
11 back pocket that they haven't served.

12 But very clearly, Mexico is not an adequate forum.
13 And it's not enough, by the way, to satisfy their burden
14 under the forum non-test to simply say that there's another
15 forum out there in which we could litigate. That doesn't
16 cut it. On these facts, Mexico is certainly not an adequate
17 forum.

18 And Your Honor, apparently the strategy that TV
19 Azteca is taking with respect to the noteholders is not that
20 different from what they are doing with Diamond Films. Page
21 34, another extract from the Diamond Films motion, or brief,
22 I should say, in response to the lift stay motion. They say
23 instead of appearing in New York to litigate the merits of
24 their breach of contract case, TV Azteca has hid in Mexico
25 and filed legal proceedings, three of them apparently, to

1 collaterally attack the New York judgment in Mexico. At
2 least their strategy is consistent, Your Honor.

3 Now the last slide I will point Your Honor to for
4 why -- actually, it's the second to the last -- why Mexico
5 is not an adequate forum is Slide 35.

6 TV Azteca's friend, Judge -- not my words, Your
7 Honor -- this is from a Mexican publication called "Reforma"
8 -- and Your Honor can see what it says. There is a judge,
9 the judge that issued the COVID injunction, who apparently
10 is frequented by companies that are controlled by Mr.
11 Salinas, TV Azteca being one of them. And so that's another
12 reason, Your Honor, why we do not believe that Mexico is it
13 adequate alternative forum.

14 Finally, Your Honor, the existing litigation
15 before the Southern District of New York, which again
16 involves different parties. But this is at Slide 36, just
17 so Your Honor -- I know the Court has read all of the
18 pleadings, but just to refresh on the timeline. So it was
19 removed on September the 23rd. On September the 30th, what
20 TV Azteca did is they asked the judge, essentially, to make
21 us go back to the beginning. We had taken advantage of the
22 summary judgment complaint procedure.

23 And so, I think the right way -- that was fully
24 briefed by October, and then in March, we commenced this
25 proceeding. The stay kicked in. I think the right way to

1 characterize the procedural posture of the Southern District
2 action, Your Honor, is we're not at the beginning. We're
3 before the beginning, because TV Azteca has decided to
4 litigate the question of should we be required to start
5 again and file a complaint, as opposed to just having the
6 District Court treat our summary judgment motion from the
7 state court as a summary judgment motion and respond to
8 that. So --

9 THE COURT: Isn't that up to Judge Gardephe?

10 MR. QURESHI: I'm sorry?

11 THE COURT: Isn't that up to Judge Gardephe to
12 decide? He might decide that he's going to deny that
13 request and then go on to the --

14 MR. QURESHI: Oh, absolutely.

15 THE COURT: -- (indiscernible) merit --

16 MR. QURESHI: Absolutely --

17 THE COURT: It's within his power --

18 MR. QURESHI: A hundred --

19 THE COURT: And there are other examples of where
20 that's actually occurred and people were not required to
21 file complaints. You know, I know in my past and probably
22 in yours you've seen it. So, it definitely does happen.

23 MR. QURESHI: Your Honor, to be clear, 100 percent
24 that is Judge Gardephe's decision. My point is TV Azteca
25 could have consented to simply proceeding on summary

1 judgment. Bad debtor, Your Honor. They didn't. They are
2 looking for delay. They are trying to avoid us. That's the
3 strategy.

4 MR. QURESHI: Finally, Your Honor, private and
5 public interest factors. And this is on Slide 37. And Your
6 Honor, this is the final factor, and again, the emphasis in
7 considering these factors is on fair and equitable, timely
8 and fair. We've quoted a couple of cases. I don't need to
9 belabor the point. That clearly is not what is happening in
10 Mexico.

11 So, Your Honor, now back to the injunctions. And
12 before I proceed going through the deck, I just wanted to
13 note, Your Honor, that Mr. Clareman accused the petitioning
14 creditors of one thing that he is absolutely right about.
15 He said we have a forum preference. Guilty, Your Honor. I
16 sure hope that's been obvious. We absolutely believe that
17 this is the right forum. This is our preferred forum, and
18 this is where it should be.

19 Now, as explained in opening yesterday, Your
20 Honor, the Debtors have been trying to avoid their
21 obligations to the noteholders since 2021. You know,
22 they've received multiple injunctions. And what I'm going
23 to focus on is what is practical import of those
24 injunctions.

25 And so, Your Honor, if we can turn to the next

1 slide. So, first of all, with respect to COVID injunction,
2 Your Honor should be aware that once the WHO declared, not
3 the extinction of COVID, which is what the injunction speaks
4 to, but instead the end of COVID as a public health
5 emergency, so, slightly different. But nonetheless, we
6 were, hindsight, apparently foolishly optimistic that maybe
7 the Debtors would take this injunction off the table.

8 And at the time, it was the only one that we knew
9 about. And we wrote a letter and we said, please withdraw
10 the injunction. Not only has the WHO said that COVID is
11 over, but the President of Mexico, shortly after the WHO
12 declaration, issued his own, which is also in the record,
13 and it says the same thing, that COVID is no longer a public
14 health emergency.

15 The response from the Debtor was from Paul Weiss,
16 on behalf of the Debtor, was go talk to Mexican counsel. It
17 will not surprise Your Honor to learn that here we are, the
18 injunction is still in force. It has not been voluntarily
19 withdraw.

20 So, Your Honor, now let's turn to the second
21 injunction, the July 2022 injunction. And Your Honor asked
22 both experts a number of questions about the timing of these
23 injunctions, about their impact on acceleration, and so
24 that's what I want to focus the Court on.

25 And so, with respect to this July injunction,

1 again, this is the one that has not been served. We don't
2 know when it might be served, but it has not been, to our
3 knowledge. In May of 2022, the noteholders issued an
4 acceleration notice. Not the Trustee. Different
5 acceleration notice.

6 It's clear that the July injunction was obtained
7 in response to the noteholder acceleration notice. How do
8 we know that? Because the July 2022 injunction refers
9 expressly to that acceleration notice. In Paragraph 2 it's
10 referred to as the notice of early maturity, dated May 3rd
11 of 2022. So we know that they got this injunction expressly
12 to extinguish any effect of the acceleration notice that was
13 sent.

14 Now, if Your Honor turns to the next slide, on
15 August the 5th, and then again on August the 8th, we have
16 more acceleration notices. This time from the indenture
17 trustee. So, what happened when the indenture trustee
18 issued an acceleration notice? Well, on the very next day,
19 on August the 9th, we now know TV Azteca got the judge to
20 issue an extension and modification of the injunction. The
21 indenture trustee was added as party. And the injunction
22 now declared that the August 5th and the August 8th
23 acceleration notices, the indenture trustee's acceleration
24 notices, were of no effect. Right?

25 So, clearly, the objective -- and as with our

1 system, Your Honor, it's not just the injunction. It's an
2 injunction accompanied by a complaint. Right? So there's
3 no question at all that in Mexico, bad debtors, they're
4 taking the position that they don't owe us anything. In
5 this Court, they're stipulate that they owe us \$400 million
6 and that they've missed a bunch of interest payments.
7 So slide 42. Your Honor asked the experts, what do these
8 injunctions mean for the insolvency showing? If we're
9 supposed to take solace, we the petitioning creditors, in
10 the idea that we can go to Mexico and file an involuntary
11 petition -- they say it again and again. And Your Honor, I
12 made this point at opening, but I'll come back to it. Let's
13 just pause and think about the absurdity of the situation.

14 They are saying, oh, don't worry about it. You
15 have a remedy. You can file an involuntary in Mexico. So,
16 Judge, abstain from taking the case. And at the same time,
17 they're running around in secret in Mexico to get
18 injunctions that have to be designed to preclude exactly
19 that. Because what the injunctions say is that there are no
20 due obligations. None.

21 I think the experts were quite clear -- certainly,
22 Mr. Guerra was -- that again, based on the very limited
23 financial information that we have access to, with these
24 injunctions in place it would not be possible to satisfy the
25 insolvency test for purposes of commencing an involuntary

1 proceeding in Mexico.

2 And, Your Honor, moreover, the fact that the July
3 injunction -- first of all, the COVID injunction does that
4 job all on its own. So the second injunction is just an
5 add-on. But the fact that it has not been served?
6 Irrelevant. Irrelevant. And the reason it's irrelevant is
7 that that injunction finds TV Azteca from the moment that
8 they received it.

9 On Slide 43, Your Honor, I just extracted the
10 relevant excerpt from the two expert reports that deal with
11 the injunctions and the force of those injunctions. And I
12 think I've belabored the point enough, so I will move on.

13 And back, now that we have the record, to
14 abstention. Slide 44, Your Honor, again it's a repeat of
15 the seven factor test, this time with some colorful red Xs
16 behind each one to denote. And I'm not sure I got the
17 symbol right, because clearly the X is meant to denote that
18 it is not a requirement that they meet. I probably should
19 have put a check mark on the other side. I thought that
20 would be confusing. But each of these factors, it actually
21 supports our case, Your Honor.

22 So let's go through them. The first is economy
23 and efficiency of administration. Well, Your Honor, no
24 doubt in the minds of petitioning creditors that economy and
25 efficiency of administration would best be served by these

1 cases remaining right here in Your Honor's courtroom.

2 With respect to the petitioning creditors, we are
3 seeking to restructure the notes issued in the U.S.,
4 governed by New York law, in a court that can move
5 expeditiously. There is no court in this country that moves
6 as economically and efficiently as the Bankruptcy Courts.
7 The fact that these Debtors are Mexican Debtors, some of
8 them, 30 -- 25, or whatever the exact number is -- 32 are
9 foreign. That fact does not change anything about this
10 first prong of the test, economy and efficiency of
11 administration.

12 As the record demonstrates, highly regulated
13 Mexican companies, even ones with a COMI in the U.S., can
14 and have been effectively restructured in this very Court.
15 That, by the way, is one of few points of agreement between
16 the experts.

17 So, what the Debtors can't do, they plainly don't
18 satisfy this factor, based on the record before the Court.
19 And what they can't do, Your Honor, is say, we're going to
20 be the bad debtor and we're going to object to everything,
21 and therefore, this proceeding is going to be really
22 expensive and it's going to take really long. You don't get
23 to do that. You can't satisfy a requirement like this by
24 saying, I'm going to be a bad debtor. And that's what
25 they're saying.

1 Factor 2, whether another forum is available to
2 protect the interests of both. And I emphasize the words
3 "both parties." Or there is already a pending proceeding in
4 state court. So, let's go through this, Your Honor.

5 TV Azteca -- again, I won't belabor the
6 injunctions -- we don't have a forum in Mexico. That has
7 been made very clear. Because to the extent we ever had a
8 forum in Mexico, they have taken it away from us. End of
9 discussion, Your Honor. They have taken it away from us.
10 Any proceeding to collect on the notes, any proceeding --
11 those are the words used in both injunctions -- that is what
12 we are precluded from doing in Mexico.

13 Your Honor, these Debtors have made clear, both in
14 the United States and in Mexico that they're going to do
15 whatever they can to avoid their obligations. So Factor 2
16 is clearly not satisfied.

17 Factor 3, whether federal proceedings are
18 necessary to reach a just and equitable solution. Sunlight,
19 Your Honor. I talked about it at opening. We really need
20 it. There needs to be some transparency. We know nothing.
21 We absolutely think that a federal proceeding -- not just a
22 federal proceeding -- this federal proceeding is necessary
23 to reach a just and equitable resolution and a just and
24 equitable distribution of assets.

25 Your Honor, without these Chapter 11 cases, the

1 petitioning creditors, and by the way, other creditors like
2 Diamond Films, for example, they would be forced to pursue
3 TV Azteca through piecemeal litigation, probably in multiple
4 jurisdictions at the same time. So this factor cannot be
5 satisfied.

6 Factor 4, whether there is an alternative means of
7 achieving an equitable distribution of assets overlaps
8 substantially with Factor 3. And again, the record
9 demonstrates the opposite, Your Honor. They're doing
10 everything they can to avoid these obligations. There is no
11 alternative means. Your Honor asked Mr. Clareman directly,
12 have there been any discussions since the filing of this
13 petition to restructure out of court? No, there haven't.
14 There haven't been any discussions for a very long time,
15 Your Honor.

16 And that goes to Factor 5, whether the Debtor and
17 the creditors are able to work out a less expensive, out of
18 court arrangement which better serves all interests in the
19 case. I needn't say anything further about that one, in
20 light of their answers to your questions, Your Honor.

21 Factor 6, whether a non-federal insolvency has proceeded so
22 far in those proceedings that it would be costly and time-
23 consuming to start afresh with the federal bankruptcy
24 process. There is no non-federal insolvency proceeding.
25 And so Factor 6 is not in play.

1 And finally, Factor 7, the purpose for which
2 bankruptcy jurisdiction has been stopped. Your Honor, we
3 are here in this court TV Azteca has elected, for reasons
4 known only to TV Azteca, not to commence a concurso. They
5 certainly could have. They certainly could have. Your
6 Honor has asked the question, why haven't they? Unless I
7 was out of the courtroom at the time, I haven't heard an
8 answer.

9 So, again, Your Honor, the purpose of this Chapter
10 11 proceeding is simple. A fair and equitable and a quick
11 process. That's what the Bankruptcy Code does. That's what
12 it's for. That's what we and other creditors need in this
13 circumstance.

14 So now, almost at my favorite part, which is
15 Globo, starts at Slide 45. But before I get there, I need
16 to digress. If I may approach, Your Honor, with some copies
17 of the Multicanal case. Your Honor, if I could ask the
18 Court to turn to Mr. Clareman's demonstrative book.

19 THE COURT: Just give me a second here.

20 MR. QURESHI: Yeah.

21 THE COURT: Okay. What page?

22 MR. QURESHI: 23, Your Honor. And 23 is the page
23 of this book that describes the Multicanal case. And Your
24 Honor already raised this issue with Mr. Clareman. Your
25 Honor asked, didn't it involve an Argentinian proceeding?

1 Well, Your Honor, I just want to put a point on that. Look
2 at their slide. Their slide says the facts of Multicanal
3 are strikingly similar to those of this case. They go on to
4 very selectively describe 90 percent of Multicanal's
5 operations were located in Argentina; U.S. based assets were
6 three bank accounts, aggregate balance of \$9,500.

7 They forget one thing, Your Honor. Multicanal, in
8 my parlance, that was a good debtor. This is a bad debtor.
9 It's not -- so, Your Honor, here's what they left out, and
10 this appears in --

11 THE COURT: Maybe it's more accurate to say a
12 debtor that decided to try to restructure under the laws
13 that is organized under.

14 MR. QURESHI: Mm hmm.

15 THE COURT: Forget that.

16 MR. QURESHI: But my nomenclature is at least
17 short.

18 THE COURT: It is.

19 MR. QURESHI: Your Honor, if I could direct the
20 Court to -- if Your Honor is looking at the page numbers on
21 the bottom right of each page, it's Page 21.

22 THE COURT: Mm hmm.

23 MR. QURESHI: In the lefthand column there is a
24 paragraph that begins, "A U.S. Chapter 11 proceeding."

25 THE COURT: Okay.

1 MR. QURESHI: It's the last paragraph on the
2 lefthand column, last full paragraph.

3 THE COURT: Okay.

4 MR. QURESHI: And it's the last two sentences that
5 I would like to direct the Court's attention to. The APE,
6 which is the acronym for an Argentinian insolvency
7 proceeding, the APE is far along, and with the caveats
8 previously discussed provides for the just treatment of
9 Multicanal's creditors. Given that this -- given the
10 Section 304 factors have been substantially met with regard
11 to Multicanal's APE, it is neither necessary nor practical
12 for a U.S. Chapter 11 proceeding to go forward. Well,
13 that's the bit that they left out of this case. It doesn't
14 help them at all.

15 This was a debtor that was doing the right thing,
16 negotiating with its creditors, starting a foreign
17 proceeding, proposing a plan. Not being a bad debtor, Your
18 Honor. Very misleading.

19 So, Your Honor, if we can go back to my exhibits
20 and to Page 45, where we discussed Globo? And I would like
21 for a minute to provide the Court with what I certainly
22 endeavored to be a more complete description of the relevant
23 facts in Globo. And these, I think, truly are quite similar
24 to what we have here.

25 Globo was a holding company organized in Brazil.

1 It owned, directly or indirectly, one of the largest
2 television production centers in the world. So it was in
3 the same business, apparently. And its headquarters and all
4 of its employees were located in Brazil. Its principal
5 office and principal place of business was in Rio. In the
6 case of Globo -- and the vast majority of its property and
7 other holdings were located outside of the United States. A
8 lot of similarities so far.

9 It had one U.S. debtor, and that debtor possessed
10 a 30 percent interest in each of three Delaware general
11 partnerships. Globo frequently availed itself of U.S.
12 capital markets. Sounds a little familiar. \$750 million
13 worth of bonds in U.S. markets. And again, like our Debtor
14 here, subjected itself to jurisdiction.

15 Now, Mr. Clareman drew Your Honor's attention to
16 the fact -- and to my surprise, they cite this this case in
17 their briefing too -- that the judge in Globo said that
18 Globo was actually a strong candidate for abstention.
19 Recall, Your Honor, the procedural posture. The District
20 Court reversed and remanded. And when it went back to the
21 Bankruptcy Court with instructions to develop a further
22 factual record.

23 And in connection therewith, the District Court
24 observed that on the limited factual record that was before
25 it, it was a good candidate for abstention. Why? Well,

1 that's the important part. Again, Your Honor, good debtor.

2 Not bad debtor.

3 What did the good debtor do in Globo? They
4 actively pursued, actively pursued, a consensual out of
5 court restructuring in Brazil. What did these guys do?
6 They actively seek ex parte injunctions to prevent a
7 restructuring in Mexico, and certainly don't commence one on
8 their own, much less out of court.

9 In Globo, the negotiations that the debtor there
10 undertook had "borne fruit" and resulted in the formation of
11 a steering committee of creditors. One apparently for
12 holders of bank debt, another for holders of bond debt.
13 Globopar paid millions in fees to the professionals of the
14 creditors so that they could get them in a room to negotiate
15 a consensual restructuring. So that's why the court made
16 the observation in Globo that it was a good candidate for
17 abstention. This case is not. Globo doesn't help them, not
18 one bit.

19 So the court in Globo -- and if I could ask Your
20 Honor to turn to Page 47 of the presentation -- like in this
21 case, in Globo the debtor did not want to be a foreign
22 debtor in an involuntary proceeding. We now know why it was
23 doing and out of court restructuring and apparently making
24 some progress. And what the court noted is that the
25 Bankruptcy Court had a "obligation" -- and it uses that

1 word, obligation -- to exercise its authority, even if the
2 possibility existed that a foreign court would ignore it.

3 So translate that to this case, Your Honor.

4 Professor Mejan, he says, waste of time, Judge. Nothing you
5 do in this involuntary proceeding is ever going to get
6 recognized or implemented or anything else in Mexico;
7 categorically. That's what he says.

8 What does the District Court of New York say?

9 District Court of New York, Your Honor, says that this Court
10 has an obligation to exercise its authority to not abstain.
11 And by the way, this is a case where jurisdiction is agreed.

12 Even if -- that obligation exists, even if
13 Professor Mejan is right. Even if he's right. That's why I
14 said at opening Your Honor, it doesn't matter if they're
15 right. It doesn't help them. Your Honor can't abstain
16 under applicable law.

17 The court went on to explain that whether or not
18 debtor cooperated, not relevant to the analysis. So, bad
19 debtor? Not relevant. Actually, it's a little the opposite
20 here, right? Bad debtor not only not relevant, but
21 certainly can't help with meeting the abstention standard.
22 That would make no sense. That would give parties all the
23 wrongs incentives, Your Honor.

24 So, Your Honor, in Globopar -- and we're now on
25 the last page of the presentation -- the court recognized a

1 number of considerations, including the lack of cooperation
2 by the debtor in that case. Foreign creditors in Brazilian
3 courts would be a significant impediment to the orderly
4 administration of an involuntary case. And the court
5 recognized the possibility that foreign creditors who are
6 not subject to the Bankruptcy Court's -- the U.S. Bankruptcy
7 Court's jurisdiction, might not cooperate. And that a
8 Brazilian court might not compel them to participate in a
9 U.S. proceeding. Notwithstanding these considerations, the
10 court said that federal courts should exercise the full
11 measure of the authority that they have.

12 And so Your Honor, the Court should not focus on
13 what may or may not occur in Mexico. It just doesn't bear
14 on the abstention analysis on the facts that are before
15 Court in this case. And they're all in the evidentiary
16 record.

17 I should add, Your Honor, that it certainly is
18 within the authority of this Court to decide to accept some
19 of the petitions and to dismiss others. Doesn't have to be
20 all of them. I'm certainly not advocating for that. I
21 think the record is applicable to all 35. Your Honor could
22 decide to keep only the U.S. Debtors, although again, on the
23 facts and on the evidence before the Court, I don't think
24 that makes any sense and I don't think there is a basis to
25 draw that distinction. Clearly, abstention is inappropriate

1 on these facts.

2 So, to conclude, Your Honor, based on the
3 evidentiary record before the Court, and based on the
4 Debtors' consistent actions to delay and to obstruct our
5 ability to recover on the notes, which is in a very
6 plentiful way in the record, and based on the ex parte
7 nature of all of the injunctions that the Debtors have
8 received in Mexico, it would be fundamentally inconsistent
9 with U.S. notions of due process, of fairness and of equity
10 for these cases to be dismissed on this evidentiary record.

11 Your Honor, these cases cry out for U.S.
12 Bankruptcy Court intervention and supervision. And with
13 that, I'm happy to address the Court's questions.

14 THE COURT: Okay. Oh, my law clerk is telling me
15 that we have to redial (indiscernible) at 4:45 PM, and so
16 that maybe we should break now, before I start my questions,
17 so that we can redial in.

18 MR. QURESHI: Sure.

19 THE COURT: Okay. So maybe, like, five minutes?
20 I don't need more than that. It takes us five minutes to
21 dial in. Is that all right?

22 MR. QURESHI: Of course.

23 THE COURT: Do you want more time.

24 MR. QURESHI: No.

25 THE COURT: Okay.

1 MR. QURESHI: Five minutes is certainly fine with
2 us, Your Honor.

3 THE COURT: And the next --

4 MAN: It takes 10 minutes to get to the restrooms.

5 THE COURT: Okay.

6 MR. QURESHI: Ten minutes it is.

7 THE COURT: Okay, 10 minutes. That's fine.
8 Okay.

9 (Recess)

10 THE COURT: All right. Mr. Qureshi, one of the
11 things you mentioned I agreed with, is that, you know, if
12 the bankruptcy proceeding continued here and I didn't
13 dismiss it that we would have a bar date and that the
14 indenture trustee would be filing claims on behalf of all
15 the noteholders. And that's what indenture trustees do.
16 And, in fact, the indenture here in 6.9 says that the
17 indenture trustee is going to file proof with claim.

18 So I want to understand how you square that with
19 the fact that your individual noteholders have not asserted
20 in the petitions claims for the redemption premium even
21 though the indenture trustee is seeking that on behalf of
22 all the noteholders. That's what I'm having a bit of
23 trouble for because what will happen in this case, if I did
24 keep it, is that they will assert a proof of claim in front
25 of me and I don't think they're waiving their redemption

1 premium unless, for example, Judge Garvey denied it or
2 something in between. But realistically, it would be
3 asserted against me. And therefore, it is something that is
4 in dispute between them. And your claims are based on the
5 indenture and obviously the notices of acceleration that the
6 indenture trustee raised, your individual claims.

7 And in the bankruptcy proceeding, you know, I
8 don't see how that isn't going to be an issue that I'll have
9 to decide that's being disputed in front of me or Judge
10 Gardephe. So please explain that to me.

11 MR. QURESHI: Well, certainly, Your Honor, before
12 Judge Gardephe, that's a separate issue from the bankruptcy.
13 Your Honor, the Court is right. The proof of claim would be
14 filed by the indenture trustee. And the simple answer, Your
15 Honor, is we don't know sitting here today what the proof of
16 claim filed by the indenture trustee would say. But what we
17 do know is that the petition creditors have very clearly
18 said that they are not pursuing that claim. And so, Your
19 Honor, I think the question before the Court, in the current
20 posture of the case is, is there a disputed claim? And the
21 answer is there is not. Again, there is a disputed claim
22 and a separate litigation which is the litigation before
23 Judge Gardephe.

24 THE COURT: Okay. I guess, I think you're going
25 to -- this will be an easy question for you, I'm guessing,

1 which was, why haven't you all commenced an involuntary
2 concurso proceeding? I assume it's because of the
3 injunction?

4 MR. QURESHI: Yes, Your Honor.

5 THE COURT: Okay. I guess, I know, I know you
6 have made what I will describe as the bad actor argument as
7 to why I should ignore what I was told might happen in this
8 case -- or in fairness, what I posited could happen in this
9 case to the alleged debtors. They didn't raise this. I
10 did. So in fairness, I shouldn't be putting it back on them
11 -- which is if I were to deny the motion to dismiss, what
12 happens if they don't quit their fiduciary duties? How do
13 you envision that the cases could proceed? The only way I
14 could see that happening is by appointing a Chapter 11
15 trustee in that circumstance, which probably then, that
16 person would have to try to get access to all of the
17 operations and control of the operations which are all in
18 Mexico except for the ones here in the United States.

19 So the rest of the debtors, certainly the 25 that
20 are located in Mexico, leaving aside for the moment TV
21 Azteca, which clearly has some contracts here in the United
22 States, but just going with my comment here, and some of the
23 other entities that have so far we haven't turned up
24 anything with the United States. I mean, they're, you know,
25 how are, you know, do you expect the Mexican courts, they

1 are going to recognize my Chapter 11 trustee and let them go
2 in and supplant the board of directors and the management of
3 TV, TV Azteca and force them to turn over control, physical
4 control and otherwise of the buildings and the operations of
5 the, of the debtors to that person?

6 MR. QURESHI: So the realist, the realistic answer
7 to that last question, Your Honor, is no.

8 THE COURT: Okay.

9 MR. QURESHI: I would not expect that that would
10 happen. But let me answer the Court's question, what would
11 happen? And again, what we are positing is a scenario in
12 which after this court enters orders for relief and denies
13 the motion to dismiss, the debtors continue to ignore the
14 Court and continue to ignore their fiduciary duty. That's a
15 big assumption. Maybe that will happen. If it does --

16 THE COURT: Well, not based on your presentation
17 it's not a big assumption.

18 MR. QURESHI: Certainly, certainly not because
19 that's how they have behaved consistently, Your Honor. So
20 what would happen? Well, the first thing I think that would
21 happen is the noteholders would exercise some of the tools
22 available to us under the bankruptcy code. And one of the
23 first would be to try to find out what's there, right? We
24 don't have financial information. We don't know what assets
25 exist. We don't know what financial --

1 THE COURT: Why are you dissing and dismissing my
2 idea about a mediation, because I really don't, when I'm
3 sitting here today and you're making your bad debtor
4 arguments to them. The problem is that I, I, look, I
5 understand your client's frustration here. I get it. I've
6 obviously expressed some of my own frustration about what's
7 going on in Mexico and my own view about what should or
8 should not be going on down there in those courts. So I
9 understand your frustration. But what I think is the right
10 answer here is at least the party should really make a good
11 faith effort to have a discussion about what's going on and
12 to try to see if they could negotiate a resolution.

13 And it's not because I'm afraid to rule on this
14 motion. I'm not. Okay? And if you decide to me that
15 you're not willing to go forward with mediation right now,
16 then I am going to rule and whether you like it or not,
17 that's where we're going to be. And -- no, let me finish.
18 And I feel that, you know, you can paint the debtors as bad
19 actors or potential bad actors, but they at least have said
20 yes, I'm willing to sit down. And you know something? If
21 you don't sit down in that circumstance, I don't know how
22 you're going to paint them as such bad actors because at
23 least then they're willing and open to having a
24 conversation. And why that hasn't happened to date, I have
25 no idea. Why they don't filed a concurso, I have no idea.

1 You're right. I don't know. But what it tells me is there
2 has to be a restructuring here. I don't think you disagree
3 with that. And the only way a restructuring happens is when
4 usually most of the time when people talk. And if you don't
5 talk, it's not going to happen.

6 MR. QURESHI: So, Your Honor, in one of our briefs
7 that we filed before the Court, we pointed out that we had
8 tried for months to get these debtors to engage with us in
9 out-of-court discussions. Clearly, that didn't work. Here
10 we are. What I said to the Court and what I believe is that
11 the posture in which a mediation is likely to be most
12 effective is first of all, one in which the Court can order
13 it once the orders for relief are entered and the Court has
14 the case. But secondly, Your Honor, that is now a
15 circumstance in which I think realistically TV Azteca has no
16 choice but to deal with the \$400 million worth of bonds.
17 Because up until now, their entire strategy appears to have
18 been to just ignore it entirely. So, Your Honor, while we
19 are willing to mediate what we believe to be the case is
20 that that mediation is only going to be effective if they
21 are in a proceeding where they have to deal with it.
22 Otherwise, it's going to be no different than the last two
23 years of trying to get them to engage.

24 THE COURT: Except you guys haven't sat down in a
25 room and actually had a conversation. Certainly not since

1 you filed these proceedings before me.

2 MR. QURESHI: And not for many months before that,
3 Your Honor.

4 THE COURT: All right. Well, I understand. Okay.
5 Doesn't, I think, the LCM require a concurso proceeding in
6 order for the plan to be enforced in Mexico? I'm not saying
7 it's necessary to it. There might not be a circumstance
8 where that's required. It might be that they agree on a
9 plan. But assuming no consensuality here, because we're
10 going with your bad debtor idea, aren't, aren't you going to
11 have to have a concurso proceeding in that circumstance?

12 MR. QURESHI: So setting to the, setting to the
13 side, Mr. Guerra's testimony and his report concerning an
14 alternative procedure that exists in Mexico to enforce
15 foreign judgments, yes, through the LCM to the extent that
16 we require recognition in Mexico of a Chapter 11 plan that
17 would require the opening of the concurso proceeding.

18 THE COURT: Okay. And then when you say, "to the
19 extent you require recognition," to me that seems like where
20 you don't have a consensual restructure here under US law.

21 MR. QURESHI: Correct.

22 THE COURT: Because if it's a consensual
23 restructuring under US law, there's plenty of examples where
24 people have not had to go to the Mexican court to do that.

25 MR. QURESHI: Yes.

1 THE COURT: Maybe there's reasons to do it or not
2 do it, but I'm just saying to you it doesn't seem to be
3 required. We have plenty of large case examples of that.

4 MR. QURESHI: Right.

5 THE COURT: But I think everybody agrees there are
6 consensual arrangements as long as they comply with all the
7 Mexican laws, they involve the Mexican authorities, people
8 are not impaired or they get proper shareholder votes,
9 everything is done according to Mexican law that's required,
10 that there's no need necessarily to go to concurso court.

11 MR. QURESHI: So, Your Honor, agree completely
12 that in the event that we require recognition of a
13 nonconsensual plan, there would need to be a concurso.
14 However, I draw Your Honor's attention to Mr. Guerra's
15 testimony and his report in which he says, so let's assume
16 the conciliation stage in Mexico fails to reach a plan
17 because the debtor won't consent. And in that circumstance,
18 a liquidator is appointed and Mr. Guerra testified, and on
19 this point, Mr. Mejan agreed that it is possible to
20 functionally have a plan imposed by the liquidator. It
21 doesn't have to be a sale of assets. When the liquidator is
22 appointed, the liquidator has a duty to maximize value. In
23 that circumstance, there would be a confirmed Chapter 11
24 plan that would certainly be provided to the liquidator.
25 And the proponents of that plan would no doubt argue to the

1 liquidator here is a basis to reorganize and to achieve much
2 more value than would be the case if you start auctioning
3 off the assets of these debtors.

4 And in addition to that, Your Honor, in the
5 concurso scenario -- so the hypothetical being an
6 involuntary plan without their consent gets confirmed before
7 Your Honor and off we go to Mexico, hard to conceive that at
8 that point, the Mexican debtor before the Mexican court
9 would continue to ignore the court. Hard to imagine a
10 scenario in that circumstance where at the conciliation
11 stage in front of a court that plainly has jurisdiction over
12 all of its assets in Mexico, that the debtor would continue
13 to say we're going to ignore our fiduciary duties. We're
14 going to destroy shareholder value to the extent they're not
15 insolvent and we're going to continue to ignore this and
16 actually let a liquidator with statutory authority to sell
17 its assets, go in and start auctioning off the assets of the
18 second largest broadcaster in Mexico, that, Your Honor,
19 seems unlikely.

20 THE COURT: Okay. If I understood the testimony
21 yesterday, I think Mr. Guerra even agreed with this point,
22 which is that there isn't any precedent with respect to how
23 the concurso court is going to look at COMI, whether it's
24 going to look at it on an individual debtor-by-debtor basis
25 or it's going to look at it separately.

1 MR. QURESHI: Correct.

2 THE COURT: So we don't know whether -- what the
3 court is going to do with that. Obviously, an insolvency
4 court, like the concurso court is, will look at what it
5 thinks is appropriate, but it probably doesn't surprise you
6 that when you take a look back at our early cases here in
7 the United States where other countries had passed the model
8 law before us, before we had Chapter 15, that people looked
9 at other countries and what happened in other countries and
10 how they approached it. And obviously, here in the United
11 States and in many of the other countries around the world
12 that have a model law, people have approached it on an
13 entity-by-entity basis. So there's no certainty, I think
14 based on today, that it's going to look at a group approach
15 in COMI. You don't know what they're going to do. I don't
16 know what they're going to do. That's why I asked the
17 question, if there was any question.

18 MR. QURESHI: No, I think Your Honor, Your Honor
19 is right that there are different possibilities. These are
20 many of the issues, if not most of the issues, that the
21 experts are opining on, are issues of first impression in
22 Mexico. And that's hardly surprising given the relatively
23 recent enactment of the LCM and even more recently, the
24 specialized concurso courts, but also, shall we say,
25 somewhat peculiar facts of this case?

1 THE COURT: Well, they are unusual. That's true.
2 All right. Well you mentioned a concern about assets
3 leaving the United States. I guess I really wanted to
4 understand what the concern is about that. I think there
5 obviously has been some discovery -- and I'm going to be
6 careful not to say anything that's confidential, of course,
7 on the record -- about what's here now, also what contracts
8 parties were entered into in the past. You obviously have
9 looked at what things were at various times and you know
10 that there was a sale of assets, because that's public, of
11 the, of the, I guess the network that was here in the United
12 States. And that that occurred to a third party and when
13 that occurred and that eventually, that shut down as well --
14 the third party shut it down, not TV Azteca, of course,
15 because it belonged to the third party at that point. What
16 is the basis for the concern about there being a lot of
17 assets here in the United States? Again, I don't have all
18 the data much like you don't have all the data, but the data
19 that I do have and that you've provided from discovery,
20 certainly seems like there were a handful of entities that
21 operated in the United States, the US, the US incorporated
22 entities, as well as TV Azteca itself had some operations
23 here because there are some contracts. But it doesn't
24 appear from the discovery that you received that there was
25 anything that indicates that prior to that there was any

1 other real obligations. And some of those contracts go back
2 to when the notes were issued, you know, the years of -- the
3 year that the note was issued. There's certainly
4 information that was provided. Certainly there's a lot of
5 information, financial information about, at least some
6 information about '19 and '20 and 2021 and 2022. Where is
7 the concern coming from assets dissipating from the United
8 States? Because I need to really understand that, why
9 that's a concern, because it just doesn't seem to me like
10 there was that many assets that were in the United States.

11 MR. QURESHI: Sure. Right. So to be clear, Your
12 Honor, we did get some discovery and what we know Your Honor
13 knows because everything that is conceivably relevant is
14 part of the record before the Court. And, Your Honor, we
15 certainly don't have any specific information that would
16 suggest that assets are being moved. Here is the nature of
17 the concern.

18 Subsequent to the sale of the broadcasting assets
19 in the United States -- that occurred in, I believe it was
20 2019 if I have my years right -- so it was 2021 when the
21 debtor decided that they were going to stop paying interest.
22 And at that time, we know that they had plenty of liquidity
23 because they went on to voluntarily redeem 200-plus million
24 dollars of the Mexican debt. And so the basis of our
25 concern is that if the debtors are engaged in a long term

1 plan to pull back from the US market, so they sold the
2 broadcasting assets, are they in the process of taking other
3 assets out of the country? Are they in the process of, for
4 example, pulling back on some of the operations that we
5 talked about when we talked about contacts with the US
6 jurisdiction? To be clear, Your Honor, we don't know. But
7 with the injunctions in place, that is the concern. We
8 don't have access to any information. And again, a
9 cooperative issuer would be providing financial information,
10 at a minimum, to the trustee. And where we have the
11 combination of a debtor that is not cooperating and a debtor
12 that at the same time is obtaining all of these ex parte
13 injunctions that says there has been no acceleration, there
14 are no obligations owing, in those circumstances Your Honor
15 can understand why the noteholders are concerned that what
16 the debtors are doing is taking anything that might be
17 reached that is of value by the noteholders and making it go
18 away.

19 THE COURT: Okay. I guess another question I had
20 for you, I guess my understanding is, you know, under our
21 obviously state LLC laws, usually an LLC is either member
22 managed or manager managed. And so I, my impression of what
23 you were talking about vis a vis the US entity, and who was
24 signing contracts on their behalf, is a little different
25 than perhaps your impression was of it or the way that you

1 were characterizing it. So I just wanted to make sure I
2 wasn't missing something. I mean, when I would see that in
3 an LLC myself, understanding how LLCs operate, I would
4 assume that they had a position. There wasn't -- in an LLC,
5 typically there's not directors unless there's something
6 unusual and that they either have members or managers. So
7 my assumption would be that this might be a manager managed
8 LLC. But you seem to be sort of using the title and I guess
9 in a way that sort of implied that maybe the party was an
10 employee. And I'm not sure I would take that, that would be
11 my interpretation of it. Just based on what I understand
12 about LLC law, my interpretation would be that the person
13 has a position at that entity where they have authority to
14 operate as a manager under their operating agreement or
15 their, their LLC agreement, which I obviously haven't seen,
16 but just, I would assume that that's something that was
17 there and not that this meant that they were an employee or
18 acting as an employee of the debtor. So I just want to make
19 sure I wasn't missing something.

20 MR. QURESHI: Sure, certainly, Your Honor. So
21 first of all, no, we have no reason to believe that that
22 person may be an employee as opposed to a manager of an LLC.
23 More importantly, Your Honor, that's not the relevant point
24 because our view of establishment is that the formal
25 designation, employee or not, isn't relevant. What's

1 relevant is the economic activity.

2 THE COURT: Right.

3 MR. QURESHI: In this case, the economic activity,
4 whether it's undertaken by a manager of an LLC or a manager
5 that is also an employee, it's neither here nor there. So
6 that point is not relevant to what we were arguing, Your
7 Honor.

8 THE COURT: Right. I understand. And it could be
9 obviously that they're taking, which would make sense
10 because this happens in LLCs, the manager is taking, making
11 decisions on behalf of the entity and acting as any manager
12 would. And if that person is in the United States, that
13 would certainly be some evidence of activity by the party
14 who has, who can make decisions at least legally for
15 purposes of the agreement under it. But obviously, I
16 haven't seen the LLC agreement, so I have no idea.

17 MR. QURESHI: Right. And, Your Honor, if I may
18 just return to a prior question the Court asked about, the
19 concern with respect to assets. So Your Honor has in the
20 record the Univision contract you have to use as an example,
21 right? That is with the US entity. And we know that there
22 are substantial revenues pursuant to that contract. We
23 don't know where that cash is going. So that -- the
24 exhibits that I put before Your Honor had a schedule that
25 shows the timing of the payments. They're quite regular.

1 No idea where that cash is going. Is, is that cash that is
2 for a moment in time sitting in the account of the US debtor
3 here in New York or somewhere else in the United States and
4 immediately going to Mexico? We don't know and this is
5 again one of the high priority items that in a Chapter 11,
6 we would use the tools available to us immediately to find
7 out what is going on with cash among other assets.

8 THE COURT: Okay. All right. That's helpful. I
9 actually don't have any other questions. Thank you.

10 MR. QURESHI: Thank you, Your Honor.

11 THE COURT: I'm sure you wanted to respond, Mr.
12 Clareman.

13 MR. CLAREMAN: Yes, Your Honor.

14 THE COURT: I know. That's okay, I was expecting
15 it.

16 MR. CLAREMAN: I'll be brief.

17 THE COURT: Before you get started, I just wanted
18 to make sure I said something. I know counsel for Diamond
19 is here. And before counsel for Diamond had asked me if
20 they could make a statement and I told them when everyone's
21 argument was finished, which it isn't yet, Mr. Clareman,
22 that they were going to be allowed to make a statement. But
23 I just didn't want anyone to be surprised when counsel makes
24 a statement. So sorry for that for the record.

25 MR. CLAREMAN: Your Honor, I would like to start

1 with the bad debtor argument and construct. What I think we
2 have really heard is that in the petitioning creditor's
3 view, a bad debtor is a debtor that doesn't do what they
4 want the debtor to do. There -- I told Your Honor in my
5 initial argument that there have not -- in response to your
6 question -- that there have not been discussions since the
7 petitions were filed. We have said we are willing to
8 mediate. There were discussions before the petitions were
9 filed. They were not successful. There is not a record on
10 which to judge who, as between the parties, is at fault for
11 those talks breaking down. And I'm not going to say
12 anything more about that other than to comment that there's
13 not a record about that. And I think --

14 THE COURT: No, understood. I think I asked a
15 question for a different reason because the case law
16 basically says, is there something else imminent? And it
17 requires me to look at whether there's other things going on
18 that are imminent that might resolve the dispute between the
19 parties, including other insolvency proceedings, which we
20 know aren't here, and out-of-court discussions.

21 MR. CLAREMAN: Right.

22 THE COURT: And since I did not know without
23 asking you what is going on in an out-of-court discussion, I
24 had to ask the question.

25 MR. CLAREMAN: I understand and I think the fact

1 that we are here saying we are willing to mediate and the
2 fact that the petitioning creditors are saying enter an
3 order to relief first is relevant to that question. We
4 heard from Mr. Qureshi about his concerns about what the
5 debtors are doing and do they have the information that they
6 need? We have certainly been making an effort to provide
7 information to produce discovery. We produced two new
8 contracts last week. We've made an effort. We have a sworn
9 statement from the CEO. The CEO was deposed about the US
10 assets. Your Honor asked questions about this, but I don't
11 think there is a basis in the record to be concerned about
12 dissipation of assets. We've heard about the Cebures --

13 THE COURT: And I also, before you go on any
14 further, I also did read the deposition transcript last
15 night. So I know what was said at the deposition.

16 MR. CLAREMAN: Thank you, Your Honor. We heard
17 about the Cebures and the fact that the Cebures were paid.
18 That was publicly disclosed when that decision was initially
19 made. The Cebures were due to mature in September of 2022.
20 So they were a first maturing debt. There was nothing in
21 the indentures that prevented the payment of the Cebures. I
22 know that they don't like that the Cebures were repaid, but
23 there are reasons for that. And there was no, there was no
24 there are reasons for that and there was no breach of the
25 indenture associated with that. And it was the first

1 maturing debt. So it would be natural to address it first.

2 You know a lot of the argument that we've heard
3 and we've heard it a lot and Your Honor commented on it, was
4 the good debtor/bad debtor construct. A lot of the argument
5 here boils down to bad Mexico. There are numerous courts
6 that have considered Mexican procedure, have addressed it as
7 an adequate alternative forum. They had an expert on
8 Mexican law come and testify. Did not testify that things
9 were being done that were contrary to Mexican law. That
10 opinion was not offered. Our argument, fundamentally, is
11 you need Mexico in order to have a restructuring. And
12 that's the point of the ultimate agreement between the
13 experts under 293 and the agreement that there is clearly an
14 establishment in Mexico.

15 So the question of what Mexico will do is one that
16 is inevitable, how Mexico treats restructuring, how its law
17 differs from our law. There is no way around it. The --
18 and I'll just say further on that point, we heard again from
19 Mr. Guerra. I think the new theory that maybe a liquidator
20 could take a Chapter 11 plan and use that. Fundamentally,
21 Mexican law is what it is. There needs to be, it needs to
22 comply with Mexican law and there's no reason to believe
23 that a confirmable plan here would be the same thing as the
24 liquidator might adopt after some hypothetical concurso
25 process and all the other processes associated with Mexican

1 law. I think that's just speculation at this point.

2 We also heard complaints about the proceedings
3 before Judge Gardephe and defenses that were asserted. A
4 complaint -- in summary judgment, a complaint was filed.
5 The case was removed from federal court. The arguments that
6 were made were all arguments that are consistent with
7 applicable US law. Judge Gardephe could have ruled on them.
8 Surely he will if the cases are unstayed. And
9 fundamentally, that courtroom, that is the, that's the deal
10 that was signed up for. I understand that there may be
11 difficulties enforcing a judgment, the amount of time it
12 will take if there is a judgment from Judge Gardephe and
13 going back to Mexico. But that is the bargain when you do,
14 when you do business with a Mexican company. That is just
15 part of the process.

16 And my last comment -- and Ms. Cornish may have
17 some additional points to make in response to some of the
18 issues that she addressed, and of course, if Your Honor asks
19 questions for me, I'd be happy to address them. This is
20 also on the bad debtor point. This is a Mexican company.
21 It doesn't want to restructure in the United States. That
22 is not an unusual thing. A US company would want -- not
23 want -- many US companies would not want to involuntarily
24 restructure in Mexico. We would think it very strange
25 actually, if NBC or Comcast, or one of these other countries

1 was being hailed into a Mexican concurso court on an
2 involuntary basis, on the basis of the record that's here in
3 terms of the contacts with that country. If it was the shoe
4 was on the other foot, so to speak, we would think that very
5 unusual. I think that would look very strange.

6 And the suggestion that even if -- this is in
7 response to Mr. Qureshi's comments about Multicanal and
8 Globopar and the fact that there were some restructuring
9 negotiations there. I've already made comments about, I
10 think, the effect of our willingness to mediate on that.
11 But fundamentally, there is no case that I'm aware of where
12 A US court looked at the law of the foreign jurisdiction and
13 concluded this won't work under the circumstances. It's not
14 enforceable and it's not doable in a manner that is
15 consistent with the foreign jurisdiction's law and said
16 nevertheless, we'll go ahead and exercise jurisdiction and
17 deny a request for extension.

18 Unless Your Honor has any questions at this time,
19 I'll turn the podium back to Ms. Cornish.

20 THE COURT: I have two things. Sorry. One
21 though, you really haven't answered my question about then
22 why not file in Mexico yourself? Why isn't there a concurso
23 there? No disrespect, if you're not going to have a
24 consensual out-of-court restructuring of this debt, which is
25 not insubstantial, and at least in front of Judge Gardephe,

1 you've agreed you owe 466 -- your client owes \$466 million
2 US or approximately that from the interest payments and the
3 principal payment, forget the redemption payment for a
4 moment, premium for a moment. I mean I've seen the
5 financials. I mean the company has to operate, it has to
6 have cash to operate. It hasn't managed to refinance these
7 notes in three years. It just sounds like it needs a
8 restructuring. And a restructuring can happen in a lot of
9 ways, not just the way you're saying in court. It can
10 happen out of court, but that requires people to talk to
11 each other and for people to actually try to have an out-of-
12 court restructuring and understand that it is restructuring
13 time and they have to approach it that way. It also means
14 that they could file in Mexico and seek to use the Mexican
15 laws to restructure. Whether that will be, they ultimately
16 come up with something consensual and that works, who knows?
17 And the Mexican laws are clear that there has to be an
18 agreement that's acceptable to the debtor -- between the
19 debtors and their creditors, so it's both. Or we have our
20 bankruptcy proceeding.

21 I do not disagree with you, but the first place
22 one would think a Mexican company is going is in Mexico and
23 not here. I agree. But it's one thing to say, you don't
24 think the restructuring should take place in Mexico, should
25 take place in the United States. It's another to say, I'm

1 ducking restructuring. That's why I'm having some problems
2 here. And does that -- it is just clear to me that a
3 restructuring has to take place. And yes, your client could
4 certainly take the bull by the horns and file concurso
5 itself. And that would certainly lend credence to why I
6 would have to abstain, for example, under the case law
7 because there would be a pending proceeding. For sure, you
8 know, that would be a different argument. It certainly
9 would mean there's a basis for parties for resolving their
10 problems.

11 It doesn't require the note holders to have to
12 potentially violate -- be in violation of superior court
13 orders in Mexico. It doesn't require the same insolvency
14 test. It requires a less difficult insolvency test. And if
15 parties actually reached an agreement, they might be able to
16 avoid an insolvency test at all through the prepack nature
17 that people discussed in the concurso law.

18 So yes, if your clients were desperately trying to
19 restructure, otherwise, I think those arguments are very
20 helpful and appropriate. But what I see here is somebody
21 who's just trying to avoid restructuring. And you're right
22 that maybe that's not my job to be the restructuring police,
23 but I just don't think it's realistic to argue, yeah, this
24 should be, this all should happen in Mexico. Yeah, it's not
25 right for it to happen here, but then not to have it

1 happening in some way, whether it's through the out-of-court
2 arrangement or through the Mexican process. And the problem
3 that I have here, which is unlike most of the abstention
4 cases, most of the abstention cases that discuss non --
5 foreign non-convenience, is I don't have another form that's
6 pending and I don't have any evidence that there's an out-
7 of-court restructuring here. And this is why I have a
8 problem with this. And it's a horrible, Hobson's choice as
9 well. Okay. It's a horrible Hobson's choice that you all -
10 - that is before me. I understand. But I don't think you
11 can tell me that I should on one hand, consider it odd that
12 someone wants to come here and restructure when you don't
13 fit into all the cases for abstention, most of them, because
14 the debtor in this case or in this case, I'll make it clear,
15 the alleged debtors have not taken the bull by the horns and
16 actually availed themselves of either out-of-court
17 restructuring on a current and continuing basis, which if
18 you look at those cases, there's like recent cases, cases
19 where progress is being made. Yourself, you noted that in
20 Multicanal, cases where things are going on, or cases where
21 there's a foreign proceeding. I don't have that. It makes
22 this case very unique.

23 MR. CLAREMAN: All right. I think the best answer
24 that I can give is that -- and maybe Ms. Cornish may have
25 more to say about this particular thing -- but the fact that

1 there is a dispute with this group of creditors is, I agree,
2 a good reason to have a conversation and negotiation with
3 that group of creditors. And we are willing to mediate.
4 The decision to file a plenary bankruptcy case and
5 restructure potentially all of the assets and liabilities of
6 the company in accordance with Mexican law, dealing with all
7 the stakeholders, is a complicated decision that goes far
8 beyond a dispute with them no matter the size of the
9 obligation. And so I think there can be very legitimate
10 reasons not to take the step of filing a concurso. That may
11 not be the best thing for the company. It may not be the
12 best thing even for them. I think that this proceeding --

13 THE COURT: No, I agree. I think if the parties
14 actually talked and reached an agreement that might
15 ultimately be the right answer and how you memorialize that
16 agreement is going to be determined by what the agreement
17 is. And I'm assuming in this context that there's actually
18 an agreement, meaning the company, the alleged debtors and
19 the noteholders all agree on how to restructure it. Then,
20 yes, you're right. There could be a lot of other ways of
21 influencing this. And I do not have -- personally think
22 that an involuntary Chapter 11 is the best way here
23 necessarily, but it can't be that there isn't a process here
24 to ask me then to abstain. I mean you are asking me to
25 abstain where there's nothing happening. And I'm not sure

1 you can point me to a case where there was nothing happening
2 in those abstention cases. And I think you need to go back
3 and look at them, but I can tell you, I can't find that.

4 MR. CLAREMAN: I agree that I haven't seen a case
5 where there is nothing happening. I agree with that. But
6 what I would say in response to that is only right now, we
7 are actually agreeing to proceed with the process with them
8 to try to negotiate with them and we are hearing resistance.
9 We're hearing, please, Judge, enter an order --

10 THE COURT: I understand. I get that. Maybe
11 that's -- if they decide that's the way they're going to go,
12 then they're going to get my ruling, good, bad, indifferent.

13 MR. CLAREMAN: But I would also say that in terms
14 of the case law and the existence of a parallel proceeding,
15 it is I agree. The cases involve other frequently foreign
16 proceedings or some discussions, you know, overseas with
17 creditor constituencies. But the point that I made earlier,
18 which I do think is relevant and I do think is consistent
19 with the case law, is that there will be a foreign other
20 proceeding inevitably. And that foreign proceeding --

21 THE COURT: Well maybe not. We just talked about
22 how there might not be a foreign proceeding inevitably. If
23 you all reach an agreement, maybe this will be done as an
24 out-of-court restructuring. That is possible. It does
25 happen if you have the requisite votes for bondholders. I

1 don't know whether you can get them, but it occasionally
2 happens. It can be done as prepack concurso perhaps. It can
3 even be done as a prepackaged 11 in that case. You might
4 decide that's the best thing depending on where all your
5 noteholders are and where you want to get the injunctions.
6 Who knows? Until you actually have a deal, you don't know
7 the answer about where the best place is for it. But I
8 understand your point that, that, you know, that there are
9 issues about it being here under these circumstances. I get
10 that, believe me. You know I've had some interesting things
11 since I went on the bench myself in the international
12 environment. One of my first large debtor cases, large
13 cases I got was a gold mine in the Kyrgyz Republic where
14 the, where the, you know, where the country of the Kyrgyz
15 Republic was fighting everything. So not only did I have
16 the issues that you're raising about abstention and whether
17 I should have jurisdiction over it, but I also have the
18 added things of issues about foreign sovereign immunity,
19 which made things really exciting for me.

20 MR. CLAREMAN: I was actually involved in that
21 case with Alan Kornberg and Paul Weiss. We were
22 representing the parent company.

23 THE COURT: Yeah, it's been -- you know all about
24 it then.

25 MR. CLAREMAN: Yeah.

1 THE COURT: And I mean, I think that's an example
2 of sometimes where things end up in front of our court that
3 don't make a lot of sense and ultimately, they lead to
4 people resolving things in ways that made sense. And maybe
5 you all need to resolve things. And I'm not saying my
6 proceeding is absolutely the right way to do this or that an
7 involuntary is the right way to do this, especially under
8 these facts. These are very unusual facts, believe me, I
9 understand that. But people not making any effort to
10 resolve it and then there not being another proceeding or
11 process going on, and then you ask the Court to abstain,
12 that makes that a little harder.

13 MR. CLAREMAN: And my, my last point on this will
14 be in terms of people not making any effort. I don't think
15 that it is -- the record is susceptible to evaluating whose
16 fault that is, who is making --

17 THE COURT: I'm not, I'm not making fault. I'm
18 just pointing out that it hasn't been happening. Again, I
19 asked because every case that I looked at on this issue,
20 every case my law clerks found on this issue -- and believe
21 me, we do our own research -- and we, you know, and you
22 know, from the first time you started this, even long before
23 we saw your briefs, we started looking at some of these
24 issues because we knew where this was going. I knew where
25 this is going. I've been in this field too long to not know

1 where it was going. But I, you know, every case that pretty
2 much exists out there where courts have abstained under
3 these circumstances, it's because something else was
4 happening and that's where I have a problem here. I don't
5 have a something else, which is why I'm suggesting that
6 parties really try to have a something else. That parties
7 don't want to try to have a something else now, then that's
8 fine. I'll get to my ruling. That's the answer because
9 that's where we have to go next. But I will say this is
10 not, you know, it's not a, it's, it's not, well, I really
11 acknowledge how horrible it would be perhaps for me to be
12 allowing this case to go forward, just go with the "your
13 client doesn't cooperate" argument and my having to issue a
14 billion orders that will probably be ignored in Mexico. I'm
15 not going to enjoy that if that's where we're going.
16 Believe me, I understand.

17 But, you know, the abstention cases abstain for
18 reasons and those abstention cases are usually cases where
19 something else is happening. And I'm just not sure I'm
20 seeing that here and that's my problem. And I just don't
21 find it fits in the case law. And again, it's not because I
22 would love to have a case like that. I would not, just flat
23 out, I would not enjoy that. You know I've certainly had
24 situations where I issued orders that other courts have
25 ignored, particularly in that case that I mentioned. And

1 that's not fun for me either. But I, I have to look at the
2 case law and I have to say, well, this case is just
3 completely different than every other abstention case that's
4 come before any other court, including respectively,
5 respectfully, the arguments that were made to the district
6 court, the arguments that were made to the other bankruptcy
7 courts before me. This is not, there's just not facts like
8 this.

9 And so, you know, when you're arguing to me that I
10 should abstain and some of this is in your control, I have
11 to think about that too.

12 MR. CLAREMAN: Understood, Your Honor.

13 THE COURT: Okay.

14 MS. CORNISH: Your Honor, I know we've been here a
15 long time. Just a couple things.

16 THE COURT: Nah, this is not bad at all. Come on.

17 MS. CORNISH: Your Honor, first off, I don't, I
18 don't want to rehash your discussion with Mr. Clareman, but
19 I do want to point out that the something else has been and
20 continues to be, and it may not be sufficient in your eyes,
21 and the something else has clearly been the pendency of an
22 action that was filed by the noteholders at their -- excuse
23 me, at their direction by the indenture trustee represented
24 by Akin Gump. You know it has been fully briefed and is
25 pending before Judge Gardephe. That's the something else.

1 As to why the company has not filed a full blown plenary
2 concurso proceeding in Mexico, Your Honor, Mr. Clareman made
3 this point, but this is one indenture, one set of notes.
4 Companies in the United States don't file, large companies
5 with global operations and lots of creditors and government
6 regulators and everything, don't just go file plenary
7 proceedings without any kind of a deal --

8 THE COURT: Agreed.

9 MS. CORNISH: -- in order to -- and so I get the
10 notion why didn't you file a voluntary case? There was a
11 lawsuit, there is a lawsuit pending with respect to these
12 notes. I understand that if there ultimately were a deal
13 that we had to deal with holdouts, that's the prepack. We
14 all know that. That's how it works, right? It works, it
15 works that way here. I'm presuming the prepack in Mexico
16 works the same way. You use that pre pack and that plenary
17 proceeding, which we all know, doesn't affect anybody else.
18 It's done to deal with holdouts. We're not at that place.
19 So it would make no sense for a company like TV Azteca, nor
20 would it make any sense to Billy's point for NBC to file a
21 full blown Chapter 11 case in order to deal with a dispute
22 over one series of notes that has not yet been packaged up
23 into a prepack. So from a business perspective, I'm not
24 answering the question. Okay. But from a legal perspective
25 and from a practical perspective, that's why. Okay?

1 THE COURT: Okay. But then also it's been three
2 years, two years, whatever it is.

3 MS. CORNISH: Understood. And unfortunately, I
4 haven't been around for those three years.

5 THE COURT: I hear that.

6 MS. CORNISH: But I'm telling you that, you know -
7 -

8 THE COURT: But it's three years of interest
9 payments. You acknowledged, at least in front of Judge
10 Gardephe, and I say it that way because it's clear to me
11 there are some other arguments in the Mexican part, that the
12 entire principle is also due and owing.

13 Okay, there's a dispute over -- I don't mean to
14 diminish it or to say it's not important because I
15 understand it is a dispute and it is going to have to be
16 resolved somewhat -- \$17 million. Okay. Clearly, there's
17 still an issue with paying the 400 whatever it is, 60-
18 million dollars, 65-million dollars in US debt.

19 MS. CORNISH: Understood.

20 THE COURT: And that's not a small amount even for
21 a large company like --

22 MS. CORNISH: Understood, Judge. Even so, that's
23 not a reason like right now to just file a voluntary
24 bankruptcy.

25 THE COURT: But it's a reason why negotiations

1 should have been going on because --

2 MS. CORNISH: And as Mr. Clareman has said, Your
3 Honor has put out the notion of mediation. And we will, we
4 will do that. We've said that. We will -- we are not
5 agreeing with the approach that Your Honor rules and enters
6 an order for relief to give them all the leverage --

7 THE COURT: I understand. I don't think that was
8 -- that was not my proposal.

9 MS. CORNISH: Understood. And I just want to make
10 that very, very clear. But yes, yes, we will enter into
11 those discussions. It should not be a surprise, the bad
12 debtor stuff while using the first 25 times, really is
13 offensive. It's, it's offensive. This, these companies
14 have done nothing and there is not an ounce of evidence in
15 this record that these companies have breached any duties,
16 that these companies have done anything illegal or improper.
17 In fact, we've been participating promptly in the New York
18 litigation. In Mexico, the petitioning creditor's own
19 expert testified that everything that was going on there was
20 pursuant to Mexican law, which we are not experts in. And
21 the issue of secrecy, there is no secrecy. It's called the
22 Hague Convention. Okay? And whether we should have picked
23 up the phone or not, that's a different issue. But the
24 point being --

25 THE COURT: It didn't bother me that you didn't

1 pick up the phone to opposing counsel.

2 MS. CORNISH: Thank you, Your Honor.

3 THE COURT: What bothered me is that you didn't
4 tell Judge Gardephe.

5 MS. CORNISH: Understood, Your Honor, understood.

6 THE COURT: That's a different situation.

7 MS. CORNISH: Understood.

8 THE COURT: You've asked him to decide something
9 where there's a contrary process going on in a court outside
10 of the country when your own indenture says really clearly
11 that it's supposed to be going on in front of him. And I
12 don't know what he'd want to do with that, but he doesn't
13 know about it.

14 MS. CORNISH: Understood. Understood, Your Honor.
15 And I think that was around the issue of service and
16 everything else. But I, again, I don't, I don't need to
17 belabor it. And we hear Your Honor's concern loud and
18 clear. Please believe that.

19 I guess the last point I'd make before I move to
20 my very narrow point on standing is it should come, it
21 should come as no surprise, and it should not brand a
22 company, okay, a large multinational Mexican company as a
23 bad debtor to say that when that company, which is a Mexican
24 company period, end of story, but has three vestigial -- is
25 that the right word? -- vestigial US entities that are

1 contract parties and a handful of contracts and some
2 manager, okay, is, is being dragged into an involuntary
3 plenary, highly-publicized Chapter 11 proceeding in the
4 United States. It should come as no surprise to hear that
5 perhaps -- and we have not discussed it with our clients --
6 but perhaps our clients would not be inclined to happily
7 come along and people are using the word "cooperate." I
8 don't know what cooperate means. If it means we're going to
9 agree to the treatment that the petitioning creditors have
10 laid out in their, in their papers, no, we're not. We're
11 not. And that should not come as a surprise and it should
12 not brand this company as a bad debtor

13 THE COURT: Okay.

14 MS. CORNISH: So let me move on, Your Honor, onto
15 the narrow issue of standing. Mr. Qureshi argues that our
16 standing, our standing argument fails because the
17 petitioning creditors are not the same parties as the
18 indenture trustee. That it's the trustee, not the
19 petitioning creditors, it's the trustee that's seeking
20 payment of the redemption premium. In the words of Judge
21 Drain, their concession is no concession at all. It was the
22 petitioning creditors along with the rest of the noteholders
23 required to get the requisite number to direct the -- first
24 of all, to file the first notice of default, notice of
25 acceleration that demanded the premium. They were, they

1 were signatories essentially to that. And then secondly,
2 directing the indenture trustee, who's no more than an agent
3 or a representative for the noteholders, including the
4 petitioning creditors. They filed, they sent the notice of
5 acceleration. They actually -- the indenture trustee didn't
6 get it right the first time. They directed him to file an
7 amended notice on their behalf to seek the premium and then
8 they filed the lawsuit. And we didn't see the petitioning
9 creditors in that lawsuit who now are represented by Akin
10 Gump. And the indenture trustee is represented by Akin
11 Gump, right? Same lawyers.

12 We didn't see the petitioning creditors then
13 saying, oh, no, no, no, Judge, we don't want the redemption
14 premium, but everyone else does. No, it is only when it
15 comes time to, in our view, seek to maximize pressure on TV
16 Azteca in connection with the dispute over the notes. It's
17 only then that the petitioning creditors are saying that
18 they're not going to seek to collect that, that premium.
19 Your Honor, as I've said, and as Mr. Clareman noted, the
20 petitioning creditors are noteholders. Under the indenture,
21 there's going to be a process if this case proceeds where
22 Your Honor is going to have to -- and you said this as well
23 -- Your Honor is going to have to determine the amount of
24 the claim under the indenture and the notes. And the
25 petitioning creditors are noteholders and whatever Your

1 Honor decides, whether they get the premium or not, is going
2 to bind them. There is a current, live dispute including
3 with these petitioning creditors over that issue. And we
4 believe that alone, Your Honor, is cause to dismiss these
5 cases for lack of standing. Thanks.

6 THE COURT: All right. I think I'm going to, if
7 it's all right, I'm going to allow counsel for Diamond to
8 make their statement that they wanted to on the record. Is
9 that acceptable?

10 MS. BOY SKIPSEY: Thank you, Your Honor. For the
11 record, Katherine Anne Boy Skipsey from Sheppard Mullin on
12 behalf of Diamond Films. Reserving all rights on this
13 particular motion, Diamond takes no position. Thank you.

14 THE COURT: Thank you. Okay. Great. Mr.
15 Qureshi, I'm taking your statement as saying you do not want
16 me to order you all to mediation now and you would like me
17 to go ahead and rule. Is that what you're telling me? I
18 just want to have it clear for the record.

19 MR. QURESHI: So, Your Honor, we certainly would
20 need to talk to our clients to see if there would be a
21 willingness to mediate now before a ruling. But let me
22 articulate in perhaps a little more detail the concern. In
23 the absence of an order for relief, number one, we don't
24 think they're going to be a good faith participant. Number
25 two, we are concerned about a continued free pass on paying

1 interest. If we're stuck in a process for who knows how
2 long, where we are mediating, they're not really
3 participating in good faith. They're just extending
4 essentially a free option, that's part of the concern.

5 THE COURT: Okay. What's going to happen if I do
6 one of two things that's different than that? Number one, I
7 agree with Ms. -- hypothetical, if I agree with Ms.
8 Cornish's argument that until you have a judgment from Judge
9 Gardephe where the disputes resolve, there's nothing for me
10 to do here and I dismiss it, you're going back to Judge
11 Gardephe. You're not getting paid interest. You're still
12 litigating in Mexico. That doesn't get you what you're
13 talking about. If I go ahead and deny the motion to dismiss
14 and we get into a Chapter 11, you're talking about unsecured
15 notes. You're not going to get paid interest either. Why
16 is that any different? What is the issue about the
17 economics about the delay?

18 MR. QURESHI: So, so Your Honor, I think the
19 circumstances under which absent entering in order for
20 relief, mediation, I think would be something that our
21 clients would likely agree to now would be first if there's
22 a time limit on it so that it is not a process that drags
23 out for an indefinite period of time. Second, Your Honor,
24 that it be a process where we actually get financial
25 information.

1 THE COURT: I agree with you. You have to get
2 some information because I don't know how you can negotiate
3 a restructuring without information. I'm just being
4 realistic. That can't make any sense.

5 MR. QURESHI: Right.

6 THE COURT: Otherwise people could just stare at
7 each other.

8 MR. QURESHI: Correct. And, Your Honor, the third
9 condition, I shouldn't call it a condition. The third
10 suggestion is also that Mr. Salinas be required to
11 participate in the mediation. As the majority equity owner
12 of the company, it is certainly the view of the noteholders
13 that nothing is going to get done without his participation
14 in the mediation. And I would imagine, Your Honor, that
15 with, with those parameters around the mediation, if we
16 could have a short break, we likely would be able to get our
17 client's agreement to mediate.

18 THE COURT: I highly doubt Mr. Salinas is going to
19 agree to participate in this. And no disrespect, Paul Weiss
20 doesn't represent Mr. Salinas. So they can't bind Mr.
21 Salinas. Mr. Salinas is not before this Court. There's
22 nothing I can do to order him to do that. I have the
23 alleged debtors before this Court because you filed the
24 petition. I certainly have the ability to order the parties
25 to mediation while they're still before me even under these

1 circumstances. I don't have the authority to order Mr.
2 Salinas to mediation. Obviously, if Mr. Salinas wants to
3 participate, he could, but I cannot promise you that I'm
4 going to be able to order Mr. Salinas. And even if I had,
5 even if I had denied the motion to dismiss, my jurisdiction
6 is still over the debtor, it's not over Mr. Salinas. So I
7 don't know how I could require Mr. Salinas to participate in
8 this. I understand that if there's any negotiations that
9 are going to happen about changing the equity structure of
10 the company, I'll just put it that way, that for certain Mr.
11 Salinas is going to have to be consulted about that because
12 under Mexican law, there's shareholder approvals that are
13 required. And yes, I do know that because we had to do it
14 in Grupo Aeromexico. So I'm only too familiar with what the
15 rules are.

16 So I understand that he would have to be involved
17 at that point. So I get that he's going to be one of those
18 parties that necessarily won't have to be in the room. And
19 I don't know if that will make things happen, but I can't
20 compel him at this point. Even if I have denied the motion
21 to dismiss, I still don't have an ability to force him to
22 come to the United States and participate in a mediation.

23 MR. QURESHI: Understood, Your Honor. Your Honor,
24 may I ask the Court for a short break so we can talk to our
25 clients?

1 THE COURT: Yes. How long would you like?

2 MR. QURESHI: 15 minutes, Your Honor.

3 THE COURT: Sure.

4 MR. QURESHI: Thank you.

5 (Off the record)

6 THE COURT: Okay.

7 MR. QURESHI: Your Honor, again for the record,
8 Abid Qureshi on behalf of the petitioning creditors. We had
9 the opportunity to speak with our clients and also to Paul
10 Weiss on behalf of the alleged debtors. Your Honor, we
11 agree to mediate. We would suggest the following and these
12 are all things we've discussed with the debtors and I think
13 we're in general agreement on.

14 First, we think the right period of time for
15 mediation would be 60 days. Secondly, we would like access
16 to financial information. I think that's a subject that's
17 going to need to be discussed further, perhaps also with the
18 assistance of the mediator to make a determination as to as
19 to what financial information we will receive. But that
20 clearly is something that will be necessary. Third, we
21 would like the mediation to be in person and with decision
22 makers in the room. And again, we've already had a
23 discussion about who for the debtors that most likely
24 decision makers are to be. And fourth, Your Honor, we would
25 like a former judge as a mediator. We have begun discussing

1 potential mediators and I think, Your Honor, we need a
2 little more time to do that. And then we'll come back to
3 the Court if that's ok with the suggestion.

4 THE COURT: Yes. No, that's fine. Of course. I
5 would have suggested that anyway, that you have a former
6 judge handle it because this strikes me as a case where
7 that's kind of necessary given what the issues are. And I
8 would have, I would have suggested 60 days. So that was
9 fine. And meanwhile, that would mean I would keep working
10 on my decision. Trust me, I won't stop doing that.

11 MR. QURESHI: And the last point, Your Honor, and
12 I think this is an obvious one, but for purposes of Your
13 Honor considering the issue to the extent a ruling is
14 required, the mediation will not be a factor taken into
15 account in the ruling itself.

16 THE COURT: Okay. No, that makes sense to me. I
17 think that's only fair for both sides. I mean, I'm asking
18 you to do it in essence, both of you. So I don't think --
19 that seems fair.

20 MR. QURESHI: Okay, thank you, Your Honor.

21 THE COURT: Okay. All right. So I guess you all
22 need a little more time to talk about it. Should we, do you
23 want to set a time or a date for a status conference so you
24 can tell me where things are going with it. It seems like
25 that might be a good idea.

1 MR. CLAREMAN: Yes, we agree, Your Honor.

2 THE COURT: Okay. So when would you like to do
3 that? I guess that's a question for you. I know we have a
4 holiday coming up. End of next week? Okay. Yeah, end of
5 next week is fine. I would have to do it I think Friday, if
6 it's going to be the very end Friday afternoon, maybe any
7 time really after 10. They actually have to look and see if
8 I have something else after 10. But it is fine. I have a,
9 I'm speaking at a conference in Chicago next Thursday and
10 Friday. I'm actually speaking on Friday at 8 a.m. at the
11 ABA conference. But after that, I don't mind going to my
12 hotel room and having a conference. That's fine. So if you
13 bear with me a second, I might have to go get my other
14 phone. One of the things about being a judge is that I have
15 three phones and, you know, two phones and three calendars,
16 including my hearing calendar. So it keeps things a little
17 lively. Oh, yeah, we have training at 10 a.m. She's
18 reminding me that's the answer. So, no, you answered my
19 question because I thought there was something I had agreed
20 to at 10 a.m. which is probably right. How would it be --
21 would it be okay -- sorry. We have mandatory training for
22 our court at 10 a.m. which is what --

23 MR. QURESHI: Your Honor, we can certainly do
24 Thursday as well if that's easier. I don't know if you got
25 something.

1 THE COURT: It's ok for me too. So any time on
2 Thursday in the afternoon is fine because I'm traveling to
3 Chicago in the morning. So anytime in the afternoon is
4 fine.

5 MR. QURESHI: Okay. 4:00 Thursday?

6 THE COURT: 4:00 is fine. Would that work for you
7 all?

8 MR. CLAREMAN: Yes.

9 THE COURT: Okay, fine. So we'll set up a
10 schedule for that, a Zoom, on our end for status conference.
11 Okay. All right. And then I just wanted to thank
12 everybody. I know obviously it's been a busy two days and
13 also a tremendous amount of work and preparation. So I
14 greatly appreciate that. And also I will just say it's
15 really nice for my law clerks to get the opportunity to see
16 fine counsel all around. Trust me, that doesn't happen all
17 that often. Not nearly as much as you would think even in
18 our district. So it's actually really always a good
19 opportunity for them. And I told my intern that now he's
20 spoiled because he's seen really fine lawyers. And so the
21 next time we have a hearing, which is Thursday, he's going
22 to be disappointed he's not seeing the same things exactly
23 as we saw here the last few days. And that, as I said to
24 him, it's just going to go downhill from here. That was my
25 joke to him. So, anyway, thank you all for your hard work

1 and your fine arguments. I appreciate it and preparation.
2 All right. Is there anything else we need to discuss then
3 before we adjourn for the day?

4 MR. QURESHI: Nothing, Your Honor.

5 THE COURT: All right. With that, Court is
6 adjourned. I appreciate everyone's hard efforts and have a
7 nice rest of the day.

8 (Whereupon these proceedings were concluded at
9 6:14 PM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: September 1, 2023